John A. Rawlins

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There is . . . "a time to laugh" . . .

Ecclesiastes 3:4

The Protective Instinct

An Alabama judge, a courtly gentleman of the old school, had to try a case in which one of the witnesses happened to be an actress greatly admired in the South. The nature of the evidence was such that the usual question "What's your age?" was more than likely to be asked, so when she came to the stand his Honor told the clerk to suspend action for a moment; then turning to the actress he demanded:

"Madam, how old are you?"

"Twenty-six," she replied, although she was at least thirty-six.

"Very well," said the judge politely. "I have asked you that question because if I hadn't it would surely have been asked you when the attorney for the defense cross-examined you. And now that you have told us your age, do you swear to tell the truth, the whole truth, and nothing but the truth?"

A Spinster's Paradox

"If I had my time over again," counseled a meditative maiden lady of advanced years, "I'd get married before I had sense enough not to."

A Quick Trade

A Texas frontiersman came into camp riding an old mule.

"How much for the mule?" asked a bystander.

"Just a hundred dollars," answered the rider.

"I'll give you just five dollars," said the bystander.

The rider stopped short as if in amazement, and then slowly dismounted.

"Stranger," he said, "I ain't agoin' to let a little matter of ninety-five dollars stand between me and a mule trade. The mule's yourn."

A Concurring Dissent

"Few women have a knowledge of parliamentary law."

"I don't agree with you—they usually become the speaker of the house."

He Keeps His Eye on the Ball

Joe: "My wife says that if I don't give up golf she'll leave me."

Moe: "Hard luck, I'd say."

Joe: "Yes, I'll miss her."

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IN THIS ISSUE

Our Cover—The portrait of a country lawyer and Grant's lieutenant, John A. Rawlins, appears on the cover of this issue. On page 650 is printed the twelfth lawyer-soldier biography of the subjects of our covers written by our historian, George R. Farnum of Boston. Our readers have manifested much interest in this series.

World Organization—Hon. John J. Parker, Senior Judge of the United States Circuit Court of Appeals for the Fourth Circuit, writes for the JOURNAL his thoughts on the kind of organization we must have to maintain peace. Judge Parker, who was awarded the American Bar Association Medal at the Annual Meeting in August, says in part: "There can be no question but that some sort of organization must be set up. Unless we are willing to let civilization drift into chaos, somebody must undertake the administration of conquered territory, somebody must help the liberated peoples establish stable government, and somebody must reestablish stable government, and somebody must reestablish world commerce and finance." We commend this thought-provoking discussion to our readers.

Some Premises of Peace—The address of the Honorable Wiley B. Rutledge, Associate Justice of the Supreme Court of the United States, delivered at the Annual Meeting, is published in full.

Setting forth both affirmative and negative premises in the consideration of plans for the peace, Mr. Justice Rutledge presents as a basic premise the idea that by adherence to the legal profession "we implicitly assert our faith that the rule of law, in all its imperfection, is preferable to any rule by force." He further points out the twofold duty of lawyers, namely, the acceptance of leadership in the discussion and statement of ideals, and, following that, the working out of the framework of new institutions and the limitations to be imposed upon the newly created power.

The Lawyer in This War—An address delivered at the Annual Meeting by Major General Myron C. Cramer, The Judge Advocate General of the United States Army, is published in this issue. General Cramer sets forth activities of the Judge Advocate General's Department, commenting upon those which offer great opportunities of service for the civilian lawyer and commending lawyers for the services they have performed.

"This war is being waged for the perpetuation of basic freedoms made possible only through individual liberty and justice under law," The Judge Advocate General points out, adding, "When victory is ours, the role of the lawyer in the task of reconstruction will be an important one."

Debate on Fulbright Resolution—Congressman J. W. Fulbright and Senator Robert A. Taft engaged in a debate during our Annual Meeting on the subject of the former's Resolution introduced in Congress to commit that body to cooperate in creating some permanent international organization to prevent the recurrence of world wars. The address of each is published in this issue to supplement the report of events which took place at our meeting.

"Individual defense is in the long run a physical impossibility, and, therefore, our only hope for security is in collective action," says Mr. Fulbright.

Mr. Taft suggests seven policies, stating that "the peace of the American people will depend much more on the skill and good faith by which these seven policies are pursued in the period immediately after the war," than upon the question of power to enforce peace and the passage of resolutions which treat our participation in the use of force as the panacea on which all depends.

Post-War Planning and the Organized Bar—Four Association members, one from each of the states of Minnesota, North Dakota, Kansas and Texas, have contributed to a symposium on this subject. Each gives his ideas of the most effective means of preventing a succession of wars and insuring, so far as possible, an enduring peace.

Notes on Practice under the Renegotiation Act—Major W. Howard Dilks, Jr., J. A. G. D., Chief of the Assignment Branch of the War Department Price Adjustment Board, discusses in this issue means of maintaining flexibility in the matter of procedure which Price Adjustment Boards have sought to maintain. In a footnote, Major Dilks supplies the addresses of the offices of the Price Adjustment Boards and Sections for the information of our readers.

The Third Great Adventure—Former Attorney General of the United States, Honorable Homer Cummings, in an address delivered before the Institute on the Federal Rules of Criminal Procedure at the Annual Meeting, discusses those Rules and commends the work of the Advisory Committee which prepared them.

Section Activities at the Annual Meeting—Section chairmen have prepared brief reports which are published in this issue to round out the Association's program for the past year.

Announcement

of

1944 Essay Contest

Conducted by

AMERICAN BAR ASSOCIATION

Pursuant to terms of bequest of Judge Erskine M. Ross, Deceased

Information for Contestants

Subject to be discussed:

"What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order?"

Time when essay must be submitted:

On or before March 15, 1944.

Amount of Prize:

Three Thousand Dollars.

Eligibility:

Contest will be open to all members of the Association in good standing whose applications for membership in the Association have been received at the headquarters office of the Association in Chicago prior to January first of the calendar year in which the award is made, except previous winners, members of the Board of Governors, officers and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to five thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with the Executive Secretary of the Association, who will furnish further information and instructions.

American Bar Association
1140 N. Dearborn Street **Chicago, Ill.**

CURRENT EVENTS

Government Lawyers And Civil Service

THE Senate will within the next few weeks decide whether the work of the Federal Board of Legal Examiners shall be continued. The Board was established by executive order under general statutory authority vested in the President. Opposition has developed to the bill (H. R. 1025) which would give express statutory sanction to the Board and which passed the House by unanimous consent and is now before the Senate Civil Service Committee.

The Board (which has been endorsed by the Association) was created at the time that most governmental legal positions were placed within the civil service. It consists of eleven members appointed by the President and serving without compensation: six high-ranking government lawyers, three private practitioners and two law teachers. The Solicitor General is chairman.

Its function is to pass upon the qualifications, character and loyalty of lawyers who are considered for government service. As a result of written and oral examination an unranked register was compiled and from it all positions of certain rank had to be filled. Special tests were given those considered for appointment to the higher grades. The oral examination and many of the special tests were given by lawyers and state and federal judges voluntarily cooperating with the Board in the several states. The Board had no jurisdiction over appointments made by the President with the approval of the Senate, over assistant United States attorneys or lawyers serving with the Tennessee Valley Authority. With these and a few other exceptions no lawyer could be appointed to a government position or if already appointed could obtain civil service status unless approved by the Board.

When at the last session of Congress the appropriation for the Board came before the House that body, while commending the work of the Board, held to its previously stated position that before another appropriation was made the Board should have express statutory authority. This position had prompted the introduction of the present bill.

The bill not having passed the Senate no appropriation has been made for the Board. As a result the Board's functions have been transferred to the Civil Service Commission. At the request of the Commission the members of the Board are acting as an advisory committee to the Commission pending final action by the Senate.

War's Effect on Federal Courts

DIRECTOR Henry P. Chandler of the Administrative Office of the United States Courts submitted the annual report of his office for the fiscal year ending June 30, 1943, to the Judicial Conference of Senior Circuit Judges which held its annual meeting in Washington beginning September 28, 1943. The report referred to the effects of the war upon the business of the federal courts.

Private civil cases dropped 16 per cent; prosecutions for violation of liquor laws went down 57 per cent; narcotic cases 22 per cent, and thefts of automobiles between states 35 per cent. Bankruptcy proceedings brought decreased 33-1/3 per cent. Government civil cases rose more than 12 per cent. Condemnation cases brought by the government almost altogether to acquire land for purposes of the army and navy, which in 1942 were double the number in 1941, showed an increase of 25 per cent more. Prosecutions for violation of the Selective Service Act and for espionage, sabotage, sedition and treason more than doubled and prosecutions for the illegal use of the military uniform nearly trebled. There were 2,311 prosecutions for violations of price control and rationing regulations.

Annual Conference of Section Chairmen

THE annual conference of the Section chairmen of the Association was held in Chicago on October 23. In opening the meeting, President Henderson announced that a mid-year meeting of the House of Delegates will be held at the Edgewater Beach Hotel in Chicago on February 28 and 29, 1944, pursuant to action taken by the Board of Governors through its Sub-committee on administration. In connection with the mid-year meeting, the State Delegates will meet at 9:00 A. M. on Tuesday, February 29, for the purpose of nominating officers and members of the Board of Governors.

President Henderson also reported that the Sub-committee on Administration favored the resumption this year of the program of regional meetings and expressed the hope that it would be found feasible to hold at least three such meetings during the year.

The chairmen of the several Sections were then called upon to review their respective programs for the current year in order that each might be advised of the plans of the others, thereby avoiding conflicts in activities and duplication of effort. There was general discussion of these programs with particular attention being given to war work and post-war activities.

A brief statement was made with respect to the ever-present printing

problem now becoming increasingly acute by reason of paper shortages and rising costs. Comment on the Handbook for Section Chairmen, which was recently distributed, was solicited, it being generally agreed that this manual is very useful, particularly to those officers who have had no previous experience with Section administration.

Referring to the subject of regional meetings, President Henderson stated that while such meetings would be general in scope and would not embrace meetings of individual Sections, the Sections could no doubt make substantial contributions to the programs and were invited to do so.

The meeting concluded with a discussion of the subject of annual meetings of Sections, particularly with reference to the number of sessions which should be held and what steps can be taken to provide members with a greater opportunity to attend the meetings of more than one Section.

American Bar Association Board of Governors 1943-1944

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Judge Allen Becomes Member of House

THE National Association of Women Lawyers has chosen two outstanding members, one from the Bench and one from the Bar, as its first two representatives in the House of Delegates of the American Bar Association. Judge Florence E. Allen, ranking woman jurist of the nation, was elected Delegate at the recent annual meeting of the association, to succeed Miss Marguerite Rawalt who was seated in March, 1943, as the first woman to serve a term in the House of Delegates.

Judge Allen has had a distinguished career on the Bench. For twelve years she was member of the Supreme Court of Ohio. Since 1934, she has served as judge of the United States Circuit Court of Appeals for the Sixth Circuit.

Crier of Supreme Court

JOHN A. KENNING, II, has been appointed crier of the Supreme Court of the United States to fill the vacancy caused by the resignation of T. Perry Lippitt who has gone into the Navy. Mr. Lippitt had served as crier of the Court since 1938.

The Minutes of the Court for February 2, 1790 (which was the second meeting of the Court) carry an entry as follows: "Ordered that Richard Wonman, be, and he is appointed cryer of this Court." For a century and a half men nominated by the Marshal and appointed by order of the Court have intoned the words which announce entrance of the Court: "The Honorable, The Chief Justice, and the Associate Justices of the Supreme Court of the United States." The Justices then take their seats and the crier announces: "Oyez! Oyez! Oyez! All persons having business before the Honorable the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting."

WORLD ORGANIZATION

By HON. JOHN J. PARKER

Senior Judge, United States Circuit
Court of Appeals for the Fourth Circuit

THERE is nothing more important in connection with the war that we are fighting than the proper organization of our effort with that of our allies; and there will be nothing more important in the victory than the kind of organization that we and they set up for preserving the fruits of victory and maintaining the peace of the world. I say "the kind of organization" because there can be no question but that some sort of organization must be set up. Unless we are willing to let civilization drift into chaos, somebody must undertake the administration of conquered territory, somebody must help the liberated peoples establish stable government, and somebody must reestablish world commerce and finance. The duty of doing this will, of course, devolve upon the victorious allied nations; and they will of necessity set up some sort of international organization for working out the problems involved. We shall be a party to this organization, not only because it will deal with matters affecting our vital interests, but also because we have learned that we cannot safely avoid our responsibilities in a world where any disturbance of the public peace is likely to threaten us with ruin.

It is possible, of course, that this international organization might be set up by the dominant victorious powers, i.e., by the United States, Great Britain and Russia, on the basis of an alliance grounded upon power and self-interest. Such an alliance, however, would be more difficult to form, it seems to me, than an international organization based upon law to which all allied and neutral nations would be admitted to membership; and it would furnish a much less secure basis for international peace. While the three great powers are united now by the common danger which confronts them, this uniting force will be removed when peace comes; and diverse aims and interests will assert themselves. History shows that a coalition of victorious powers is inevitably dissolved as their interests change with the passage of time, as controversies arise and as different members of the coalition seek alliances with the defeated powers to support their aims and ambitions. Any organization to preserve the peace of the world must be based upon something deeper than the transient self-interest of a few nations allied to conduct a war.

In making the peace and in setting up an international organization to restore order, furthermore, the three great powers cannot act alone or look only to their own interests. Twenty-nine other nations are allied or associated with them in carrying on the war, and these must have a voice and their interests must be considered in any peace settlement or in the setting up of any world organization. Whatever the great nations might think of imposing terms upon the conquered, they would not attempt to dictate to their allies or to ignore them in the peace settlement. Any post-war organization, therefore, must be set up on a world-wide basis; and it is clear that such an organization would have much greater chances of success if founded upon broad general principles of international cooperation for the purpose of enforcing justice in international affairs, than if based upon transient ideas of the self-interest of the dominant victorious powers. If the United States, Great Britain and Russia, in any post-war organization for stabilizing international affairs, must take in the twenty-nine allied nations with whom they are now cooperating, the organization formed, would, in all probability, be of a sort in which neutral nations should be asked to participate. If this is done, what we have is a league of nations for regulating international affairs and preserving peace, whatever it may be called. It seems to me, therefore, that we are inevitably back again to the problem of organizing some sort of world government for the preservation of world peace. My thesis is that such government should be based on sound governmental principles for the purpose of enforcing law in international affairs, and not upon transient ideas of self-interest of dominant powers for the purpose of protecting themselves under the outmoded patterns of power politics.

The time has come for us in the United States to face frankly the question of world government and to do something about it. We cannot live to ourselves, and any effort to disassociate ourselves from the problems of the world only gets us into deeper trouble. The fact is that the great improvements in transportation and communication have bound the nations of the world so closely together that the life of each is inextricably intertwined with the lives of the others. Each is dependent upon international trade and communication, if not for its existence, at least for its progress and prosperity. Any part of the world can be reached by air from any other part in a few hours' time. Communication is a matter of seconds. A disturbance of the peace in any section disturbs the peace throughout the entire fabric of civilization. Every nation, therefore, has a vital interest in that phase of the world's life which is international in character; and there can be no question but that there has been achieved the necessary unity of ideas and ideals among the allied and neutral nations with respect to the fundamental basis upon which international affairs should be conducted to justify the effort to organize international life.

With the expansion of the life of nations beyond national boundaries, accompanied as it is by a unity of

interest in a world order and unity of ideas and ideals upon which a world order can be built, the time has come for us to establish government by law in international affairs. International law, of course, we already have. Law arises out of life. It is the categorical imperative of organized society. International law is implicit in the relationships of international life; and notwithstanding the lack of any adequate organization it has already been developed sufficiently to guarantee the peace of international society if it were adequately declared and enforced. The trouble is not so much lack of law as lack of authority to enforce it, i.e., lack of international government with power to compel obedience to law. Government must rest, as Pascal tells us, upon both reason and force. Force without reason is tyranny, but reason without force is anarchy. And anarchy in international affairs is what we have had; for, while reason expressed in treaties and conventions has declared the just rules of international law, there has been nowhere a government with jurisdiction and power to see that they are obeyed. We have sought to set up government in international affairs by reason and common consent without adequate organized force to support it, with the result that it has broken down into international anarchy. Not having brought force to the support of reason, we are threatened by those who would base government on force alone. There can be no enduring peace, no adequate national security, until international life is organized under some form of international government operating in accordance with law and clothed with power sufficient to compel obedience to law in international affairs.

I see no reason why the international life of the world should not be organized for the protection of the peace and order of society, just as life within nations has been organized. When Dillinger and Touhy started out to plunder and rob, we did not depend upon the individual effort of citizens who were wronged by their violation of law to restrain them. They were dealt with by the force of organized society. When Germany and Italy and Japan, however, started out on a course of international robbery in violation of international law and the common dictates of humanity, they were able to disturb the peace of the entire world because there was no organization of international life with force at hand sufficient to restrain them. This war would never have occurred if such force had been available to restrain Japan when she seized Manchuria, to restrain Germany when she marched into the Rhineland or to restrain Italy when she invaded Ethiopia. If such force had been available, the probabilities are that there would have been no occasion to use it, for none of these nations would have dared to defy the combined strength of an organized international society.

Organization Better Than Balance of Power

Nations through the last century sought to attain security by maintaining what was called the balance of power. The idea was to form defensive alliances so strong that the members thereof were not likely to be attacked by any combination of nations that might be organized against them. Before the last world war, Great Britain, France and Russia were parties to one such alliance and Germany, Austria and Italy were parties to another. The Monroe Doctrine formulated by John Quincy Adams and Canning was an alliance somewhat of the same kind, its purpose being to protect the American continents from the ambitious designs of continental European powers. The theory of the balance of power, however, has broken down. It was based, not primarily on reason and justice, but on force and self-interest. It failed to preserve the peace in 1914; and it is bound to fail so long as nations, actuated by self-interest and self-aggrandizement, are able to persuade themselves that they can succeed against an alliance which they deem it in their interest to attack. A world government established by the civilized peoples of the world and equipped with force adequate to preserve international peace would have all the advantage of the balance of power without its weakness. It would bring to the defense of a nation unjustly attacked sufficient force to protect it, would have no national ambitions in conflict with the interest of any nation and would use the force at its command in accord with the organized sense of justice of peoples so numerous as to render unlikely the mistaken or partisan use of power.

One of the great burdens which will weigh upon mankind after the war is the cost of armaments and the maintenance of great standing armies. If the world is maintained as an armed camp, this burden will be insufferable. The efforts of men will be devoted, not to raising the standards of living or to the spread of learning and culture, but to the manufacture of munitions of war and to training themselves in the profession of arms. If this is to be avoided, some means must be devised for the limitation of national armaments; but none of the great powers will dare to consent to such limitation if the result will be to leave it powerless before those who through greed, envy or revenge may plot its destruction. Only by raising up and arming an international organization, whose action the nations of the world can control and whose duty it will be to preserve them from attack, can they be assured of the protection which will render it safe for them to limit armaments.

This war will bring the United States to a position of great power and influence in the affairs of nations. Such a power is accompanied by great responsibilities. The free nations of the world will look to us as the leading nation in post-war civilization, and we owe to them as well as to ourselves the duty of exercising that leadership wisely to establish order in international affairs—order based upon law and justice and supported by the organized force of civilized society. The time has passed for such holocausts of death and

destruction, precipitated by the selfishness or greed of nations, as we have witnessed now twice within a single generation; but such calamities will be constantly recurring if international life is not organized on the basis of law supported by adequate force—if individual nations dominated by greed or ambition are left free to plunder or enslave the weak when they feel that they have power to do so. International order should be based on justice and right, not on "the good old rule, the simple plan, that they take who have the power and they keep that can"; and no higher responsibility rests upon this great nation, so singularly blessed by God and by nature, than to use her great power of leadership for the establishment of such a world order.

The League of Nations

In any thinking about world organization, we must take account of what the League of Nations accomplished. As a matter of fact, it did a very great deal towards unifying world life. It brought together 63 of the 72 nations to discuss in a common forum problems affecting international life. It resulted in fruitful cooperative effort in the solution of many vexing problems of international significance, such as international labor problems, international health problems, problems arising out of the traffic in narcotic drugs, etc. It provided sound government for areas subjected to international control. It brought into being the Permanent Court of International Justice for the settlement of international disputes upon a juridical basis. It unquestionably averted wars in a number of instances. And it could undoubtedly have accomplished a great deal more along this line if the United States had been a member. The League was born of the idealism of this country and was incorporated in the treaty of Versailles by reason of the insistence of our President. We were the richest and most powerful nation in the world; and no one can say what would have been the course of the League's development or what it might have accomplished in world affairs, if American statesmen had sat in its councils and helped direct its efforts in the stormy years following the last war. Not only were League efforts crippled by reason of the impossibility of securing unanimous action of nations in the absence of the United States, but this absence resulted in the loss of leadership of the country that naturally should and in all probability would have been the leader of League action.

The fact that the League failed, under such circumstances, to preserve the peace in this world crisis, is no reason why the idea of world organization for collective security should be abandoned. The League's usefulness has been demonstrated and its weaknesses have been pointed out by experience, and we are now in position to build a better organization on the basis of the knowledge thereby acquired. We have learned much from our experience with the League just as our fathers learned much from their attempts to form a confederated government in the early history of this country. Our first attempt to form a government in America, the Confederation, was a failure. Our first efforts under the Constitution itself resulted in the Civil War, the greatest war that had ever been fought in the world up to that time. Not until we had organized the life of the country in a central government with adequate powers was our confederacy of states any more than a rope of sand, and not until we had further strengthened it by the thirteenth, fourteenth and fifteenth amendments, was it capable of functioning with assurance and success.

We should remember that the League was formulated by some of the best minds who have ever given thought to international affairs. It brought together in its organization, at one time or another, all of the leading nations of the world except ourselves. Britain and Russia, the two great nations with which we must deal in the future in forming any sort of world organization, were enthusiastic in its support and conceivably would still be willing to cooperate along similar lines. It has accumulated a vast fund of experience and has perfected organizations of great value for dealing with international questions. To me it seems wiser to proceed along the general lines of the League structure, strengthening it where it is weak, adding such powers as experience has demonstrated to be necessary, and making such changes in its organization as seem to be wise, rather than to attempt some entirely new and different plan of organization.

The League was a mere association of sovereign states for the purpose of preserving peace among nations. Its value consisted in the agreement among its members to refrain from warfare as an instrument of national policy, to submit to arbitration or judicial settlement matters of dispute which might arise, to consider in council and to advise with regard to matters which might threaten international peace, and to assist in the defense of a member unjustly attacked. It was given no power, however, to legislate with respect to international affairs and had no independent force of its own which it might use for the preservation of peace between nations. It consisted of a Council and an Assembly in which the members sat more as ambassadors than as members of an independent organization, and which could not act, even in an advisory capacity, except by unanimous vote. It created a Permanent Court of International Justice, but the jurisdiction of that court depended upon the consent of parties and the League was given no adequate power to enforce its decrees.

The weaknesses of the League, which experience has demonstrated, were : (1) It was given no power to legislate with respect to the international phase of world life and thus give organization and stability to international relationships; (2) it was given no power to use organized force for the enforcement of international law or the preservation of world peace, but

could only advise action by member nations; (3) no adequate provision was made for the compulsory adjudication of international disputes or for enforcement of the decrees of the court which it established; (4) unanimous action was required both of its Council and Assembly; and (5) members of the Council and Assembly were under no obligation with respect to the League, but only with respect to the countries that they represented, and voted by countries. In any world organization to be hereafter set up, these weaknesses must be overcome. The association of nations and the obligations assumed under the old covenant must be retained, but to these must be added powers which will enable the League to function adequately in the regulation of international life and to restrain breaches of the public peace. This means that to the League must be given certain governmental powers in international matters. These powers should, of course, be strictly defined and limited, as they would constitute limitations upon the sovereignty of member nations and failure to define and limit them strictly would be a fruitful source of future strife and conflict. It is a mistake, however, to regard the granting of such powers as in any sense a detriment to or a weakening of the nations granting them. New York enjoys a richer and fuller life as a member of the American Union than she would ever be able to attain as an independent sovereignty; and the same result would follow in the case of nations becoming members of an international organization and giving to such organization powers with respect to the international phases of world life. It is a source of weakness and not of strength for nations to be charged with responsibility with respect to matters beyond their jurisdiction and control.

Sovereignty and Limitation of Power

There has been much nonsense talked about sovereignty. "Sovereignty", says Chief Justice Jay in *Chisholm* v. *Georgia,* 2 Dallas 419, 472, "is the right to govern". This right is not arbitrary, but arises out of the nature of the relationship to which it is applied. In our American Union the people of the several states possess sovereign power with respect to local affairs, the people of the entire union with respect to national affairs. The international community, on the same principle, should exercise sovereign power with respect to international affairs. If a matter concerns me and nobody else, I am the one to decide what to do about it. If it concerns the people of North Carolina and nobody else, the people of North Carolina should decide. If it concerns the people of the United States and nobody else, they should decide. If, however, it concerns the international society of the world, that society, properly organized, should make the decision. In exercising sovereign power in matters of national concern, the federal government does not encroach upon any powers which the State of North Carolina ought in the nature of things to exercise; and in exercising sovereign power in matters of international concern an international organization would not encroach upon powers which any nation should exercise. A whole should be governed by laws relating to the whole and not by laws relating to a particular part; and only by government having relation to the welfare of the whole can conflict be avoided between conflicting interests of the parts.

As stated above, the powers of any sort of world government which is to be set up must be strictly defined and limited. To give general jurisdiction to legislate with respect to any matter that may threaten international conflict would constitute such an invasion of national sovereignty that no considerable number of nations, I think, would agree to it. Certainly this nation would not; and it is well to remember that fear that something like this might be involved was an important factor in our refusal to join the old League of Nations. On the other hand, it is essential that power be vested somewhere to control the international phases of world life. Attempts by the several nations individually to control international relations can only result in strife and conflict; and attempts to regulate them by common consent will invariably break down when there is deep-seated disagreement or where national selfishness or ambition come into play.

What are the powers that an international government should have? Without attempting to enumerate them with exactitude, they may be stated generally to be the powers necessary to regulate the international phases of world life—i.e., the power to prescribe general laws regulating international trade, travel and communication, the power to protect the freedom of the seas and of the air for these purposes, the power to make rules of international law, the power to preserve the peace between nations by the exercise of its own force where necessary, the power to render and enforce binding judgments in international disputes, and powers of this general character. These powers should be definitely and unequivocally stated; and it should be made clear that no power is granted to interfere with the exercise of national sovereignty in other particulars. With respect to the control of international trade and communication, for instance, it should be made clear that the powers granted the international government do not infringe upon the power of nations to regulate their internal affairs by the imposition of tariffs or by restriction of immigration.

For the protection of the powers vested in the international government, definite limitations should be placed on the exercise of national sovereignty. The right to make war except in self-defense should be forbidden to the member nations, certain kinds of treaties and alliances should be forbidden, provision should be made for limitation of armaments capable of being used for offensive warfare, and limitations should be placed upon the right of nations to restrict the use

of the air or the seas for travel or communication or to restrict the use of ports or navigable waters.

There has been a widespread notion in this country recently that an international government should be charged with responsibility for guaranteeing freedom and democracy to men everywhere, and some have gone beyond this and have advocated something like a planned economy for the entire world. This, of course, is a dream that can do nothing but hinder our efforts towards world organization. Russia would never be willing to accept our ideas of democratic government for regulation of her internal affairs, and it is certain that we would not accept her system here. The efforts at planned economy have nowhere met with such success as to justify an attempt to apply it on a world scale. We must leave to the nations the regulation of their internal institutions and internal economy, not only because they will be better satisfied with their own institutions than with those provided for them by others, but also because no world organization that could by any possibility be evolved could successfully prescribe local government for widely scattered peoples with widely differing ideas and ideals. There is no more important element in the concept of democracy than the principle of local self-government.

Provision should be made, however, for setting up commissions to make studies and recommendations as to matters which are important to the development of world life but which are left entirely within the sphere of national control. The most important and fruitful activities of the League of Nations have been in this field, and efforts of this character might well be extended. Studies and recommendations with respect to labor questions, currency stabilization and exchange, agricultural development, production and distribution of food and raw materials, public health and control of disease, regulation of the traffic in narcotic drugs, etc.,—these would be of great value to the progress of mankind. I do not mean that the international organization be given power to legislate with respect to anything except the international phases of such matters, but commissions should be set up to make studies and recommendations with regard thereto on a broader basis to further international agreements and legislation by the member countries.

Among the subjects which should be studied by an international commission is the formulation of an international bill of rights, a declaration of certain fundamental rights of the individual which all nations admitted to membership in the world organization should observe in dealing with their peoples. All men need justice and all men need freedom to express personality and to worship God; and no nation which denies these fundamental rights to its people is entitled to be a member of a community of civilized nations. It is probably not practicable to secure universal adoption of the principles embodied in the American bill of rights; but it is not too much to hope that we may eventually secure an agreement among nations not to deny their peoples freedom of religion, freedom of speech or the equal protection of the laws. This would solve in large measure the troublesome question of dealing with minorities. If every citizen is given equal justice under law, governmental oppression of minorities cannot arise.

Is the Proposal Practicable?

The test of any plan for preserving the peace of the world is, not merely whether it is desirable, but whether it will work. The question arises, therefore, whether it is practicable to give a world organization of nations the limited power to deal with international matters that I suggest. I believe that it is. I see no reason why a legislative body could not be set up composed of representatives of the constituent nations, to which could be given real power of legislation with respect to matters within the League's jurisdiction, such matters as raising and equipping an adequate armed force, prescribing general rules governing international trade, travel and communication, prescribing and modifying the rules of international law, or defining crimes against the laws of nations and providing for their adequate punishment. I see no reason why an executive council could not be vested with power to see that the laws of the international organization are enforced and obligations assumed by member nations are observed, or why it could not be provided with a military force subject to its control adequate to enforce the law and guarantee international peace. And I see no reason why the Permanent Court of International Justice should not be given compulsory jurisdiction of international disputes of a legal nature and some form of compulsory arbitration be provided for the settlement of other international disputes. The exact form of the international organization or the precise powers to be given it are not important. The matter of importance is to set up some form of world structure which can bring to bear the force of organized society in support of government by law.

World Government by Law

In this connection, the problem of peace is not the negative one of merely avoiding conflict. Peace is a positive thing. It involves the functioning of life in accordance with the laws of life. Peace in international affairs is dependent upon the functioning of international life in accordance with the proper laws of such life. If we are to have a peaceful world, these laws must be ascertained and declared by reason and a world organization must be devised which will bring to their support the force of organized world society.

A regional organization of nations has been suggested. Such organization would doubtless be of great value for purposes of economic development and otherwise and is not inconsistent with the world organization for government by law that I have in mind. Customs

unions and confederation of small states into national unions, after the pattern of the United States or the Soviet Union or the Cantons of Switzerland, are highly desirable; but such regional organizations would not of themselves fulfill the function of preserving world peace or giving government by law. Without a world-wide organization to stabilize international affairs on the basis of law, they might well lead to a revival of power politics with all of its evils.

Shall the Conquered Nations Participate?

The setting up of an adequate world organization is not dependent upon the answer to this question; but the question is one which should be considered in connection with the subject. The conquered countries would, I take it, not at first be given representation in the international organization. They will in all probability be subjected to control by an international commission until such time as they are fitted to take their place in the family of nations. This control, however, is a matter which should properly be undertaken by the international organization; and when the conquered peoples have given evidence of their capacity for self-government and of their willingness to live peaceably in the international organization, they should be given a voice therein. It would not be feasible, nor would it be right, to condemn them to an inferior status for an unlimited period. The leaders who have instigated and led in the perpetration of the great crime against humanity involved in the present world war should be promptly and adequately punished, and the peoples who have allowed themselves to be led into the enterprise should be deprived of the power to cause further trouble; but after the life of these peoples has been purged of the criminal and dangerous tendencies which make them a menace to the peace of mankind, they should be given a place in the council of nations. Outside the world organization they would almost inevitably constitute a rival and hostile organization and would be a constant source of danger when their strength should have recuperated from the effects of war. Within the organization, they would be subject to its restraining influence and their ambitions, like those of other nations, would be directed along lawful and peaceful lines.

Conclusion

The forces of science and commerce have brought the world to the position where its life must be given unity. It is unthinkable that the strife and conflict which have attended recent years should be allowed to continue. If unity is not achieved through reason, it will eventually be achieved through force. False nationalism, which exalts a part above the whole, cannot triumph for long. It will surely create, it has already created, conditions which will bring about its destruction. The only hope now of defeating those who would unify the world by force, is for us to rise, as we have risen, above the narrow limitations of nationalism and join hands with men of good will of other nations who believe as we do in the reign of law. If we can do this in time of war and passion for the sake of winning the victory over our enemies, there is no reason why we cannot do it in time of peace for the purpose of preserving the fruits of victory.

It is important that we begin at once to enlist the thought of the American people in this great enterprise and let the world know where we stand. Consideration of many matters affecting the post-war world should be deferred until the victory is won, but our attitude with respect to some form of world organization for preserving peace and establishing government by law is a matter upon which the sooner we declare ourselves, the better. Such a declaration would stimulate thought along similar channels in allied countries, would encourage our enemies to lay down their arms and would do much to allay the fear that after the war is won we shall refuse to accept the responsibility that will rest upon us to take part in organizing a peaceful world society. Our allies were members of the League of Nations. Not only was our refusal to join the League taken as an indication of opposition to the idea, but the failure of the League has been blamed in large measure upon our failure to join it and participate in its deliberations. If it is thought that our present attitude is one of opposition, planning for post-war organization will proceed along the old lines of alliances and power politics. A clear declaration that the American people favor an organization of nations for the establishment of government by law in international affairs would give new hope to the world.

Former President Hoover and Ambassador Gibson have ably argued that many of the problems of world reconstruction must be worked out over a long period. I am in accord with this suggestion; but the problem of setting up an international organization for preserving the peace and giving the world government by law is not one of these. The greatest need for such an organization will come in the stormy years immediately following the war; and the organization will provide the best possible machinery for working out the long-time problems. Furthermore, the farther we get away from the war, the weaker will be its unifying influence upon our allies. We should strike while the iron is hot. While the minds of men are still alive to the horrors and dangers of war, while our hearts are filled with generous impulses towards our allies with whom we have fought in the common conflict, before jealousies and disputes have arisen and minor alliances have been formed, we should get together with our allies and with such neutral nations as will join us, agree upon a fair plan of world organizations, and throw behind it the enthusiastic support of victorious nations determined that the sacrifices made in preserving our civilization shall not have been made in vain.

SOME PREMISES OF PEACE

By HONORABLE WILEY B. RUTLEDGE

Associate Justice, Supreme Court of the United States

A YEAR ago, when you met in Detroit, it was doubtful whether you would meet again during the war. There was a prevalent feeling against unnecessary congregations. And some made plain that lawyers' assemblies were of that character.

They were honest, sincere, moved by the thought that every energy should be devoted to the single, immediate, compelling task. For support they had semblance of reason in our inauspicious start; the age-long months required to overcome that handicap; the inconclusive nature of our military successes to that time; the tenuous hold we had on vital positions; the corroding doubt which yet remained whether we, and our valiant allies who had borne so much more of the earlier burden, had strength or time to overcome their near-exhaustion, and our initial blunders. So it was said no effort should be diverted from the basic business of waging war. And, among the things marked to eliminate were lawyers' organized activities.

That view reflected, as a mirror, the time's unspoken mood. Then we were living more upon hope than by faith; more in determination than in confidence. The world hung still too much in balance for creation of a sense of inner knowledge of the outcome. Stalemate was yet within the lay of the board. This we dared not utter, so we spoke with confident words. But we disclosed our inner uneasiness, and our lack of assurance founded in fact, by some of the things we said and did, perhaps more in none than the suggestion that lawyers should suspend professional meetings for the duration.

Your President and his associates wisely did not yield to this pressure. This was an evidence of deeper, more prophetic understanding. It disclosed two things. One was a more confident assurance that things would come out better than the rejected notion promised. They have. The other was a more basic belief. It was that, however hard the course of the war might be, short of final disaster, there was, there always would be, work for the organized Bar to do; work of transcendent importance in winning the war, in keeping our legal machinery in function; in resolving the myriad of legal problems created by the war effort; in mobilizing under law a nation at arms; and at the same time in seeing to it that, in all the stress of conflict, the rights of individuals and of groups should have the maximum protection consistent with the nation's primary effort and interest. These war tasks of the lawyer in themselves justify your coming together to consider them. The time of greatest peril is, least of all, the time to surrender the lawyer's essential, though then subordinate function.

It is likewise not the time to forego consideration of its place in the future. For, when hostilities end, authority returns to civilian hands and the lawyer resumes his accustomed primary place in the functioning of government and the limitation of its operations. For these tasks forethought is required, unless we are to approach them unprepared, and that can be had best by exchange of ideas and information through such media as your meetings afford.

Your officers, therefore, took the sounder view. It and the opposing one represent opposite perspectives of the lawyer's place, and, therefore, the place of law, in our institutions. The one classifies them as frills, as non-essentials. That is a philosophy of might or of fear. The other view comprehends that the sustained, uninterrupted performance of the lawyer's function stands in the center of all this war is fought to preserve and create. It envisages also that consideration and discussion are necessary for its most effective operation.

It is fitting, therefore, rather in my view it is a duty, that you meet and continue to meet while the war goes on. And I hope the notion will not be voiced again, certainly not accepted, that any other course be pursued. It is preeminently appropriate also that you have invited to share your deliberations the distinguished leaders from overseas and above our border, who grace this and your other meetings with their presence. They bring assurance that men of law, wherever law yet reigns, seek with us a larger and, if law in the sense of a foundation for liberty is to survive, an essential fulfillment of our function. In particular I wish to extend to them the cordial welcome of our courts.

A Different Spirit and a Change in Emphasis

Furthermore, we gather this year, by contrast with last, in a different spirit and with a change in emphasis. The events of twelve months have fulfilled our hopes, and more. The present hour is pregnant with victory. Now we know, as we could not know then, that this will be no half-won war. The stalemate is out. Fact has given foundation for assurance that hope, however courageous, could not supply. And for this we give

Address delivered before Assembly, Fourth Session, August 25, 1943.

grateful tribute to the valiant men, of our own and other nations' forces, whose courage and sacrifice have brought our fortunes so soon to this high place.

We assemble, therefore, in elevation of spirit, though we do not let it blind us to the danger of expecting an end too soon or predicting when it may come. That question is not within our province, and there is peril in all such talk by men and women who have not all the facts and, with them, the expert judgment to form a reliable opinion. Few are qualified in either respect. And, for others, the only secure course is caution, lest we bungle again by overconfidence as disastrously as we have done before. But uncertainty of time cannot diminish the confidence which certainty of the result induces. Nor can it reduce our effort, either for what remains of the work at arms or for what will come after that. Rather assurance of the result requires that we be about our business with even greater intensity, for ending the present phase and entering the next.

An Old Fallacy and a New Phase

Our increased assurance not only has justified the lawyer's continued and organized activity in the war effort. It has brought a new emphasis, one peculiarly within his province. We are conscious that the more immediate business of the nation, and of others with whom we fight, is prosecution of the war to an early termination. By now too it should be clear that every effort will be subordinated to this until that initial end is achieved. But, before the pressures created by our uncertainty of the outcome in this phase were released, we were told often, and by some in high authority, especially among our military men, that we had no business, while the war continues, to discuss, even to raise the question of what should be done about the post-war world. How familiar became the admonition that the business of war is war and nothing else; that the peace could not be made before the war had ended; and that any consideration of its character would divert energy from that primary labor, would bring only division and disunity, and, therefore, should be put under taboo for the remainder of the phase at arms.

That also was a reflection of uneasiness. But it was more. It was a voicing of our accustomed mode of thinking that war and peace are entirely separate, disjointed phenomena; that they are walled-off eras; and that, in each, thinking and action must be limited to the task immediately in hand.

It was this fallacy which brought us into the war wholly unprepared, though we had ample warning against it from the highest sources and from the gigantic facts of the pre-war period, flaunted daily before our eyes for all to read their meaning. Some did. But not enough to ward off the peril. Large segments of our leadership and of our people wanted nothing more to do with war, and concluded from that desire that nothing more was needed to avoid its horrors than simply to decide we would not have it again. The desire was high-minded, admirable; the conclusion drawn from it, as events have shown, became our hugest blunder in national logic. By wishful thinking, we formulated the policy of "Never Again," and followed it until the enemy suddenly disclosed the decision was his more than our own. And so, by shock, we learned that the business of peace is not always peace alone; that the strongest will to peace cannot secure it if others are free and powerful to disturb it. That day in December destroyed premises of peace upon which we had acted for a century and a half. Among them were the idea of our own security in geographic isolation; the notion we could escape the flame when all the remainder of the world was in conflagration; the delusion that power-drunk tyrants, openly proclaiming Democracy's decadence and the determination to destroy it, would leave us also into peace, equally unprepared. We should that we might have liberty though the Fascist heel should grind all other peoples underfoot.

Causes of Wars Are Created in Peace

Pearl Harbor was a rude awakening. It brought down much more than battleships. Outworn ideas and ancient dogmas were among the wreckage left that day. And from this one might suppose we had learned that the fallacy which led us into war so unready may lead us also into peace, equally unprepared. We should have been taught, by this if nothing else, that war and peace are not wholly segregated things. They are rather but different phases, inseparably connected in influence and consequence, of single, though vast and complex movements. The causes of wars are created in peace. And the failures of peace are germinated in wars and in their settlements. The present stage is but the inexorable culmination of a vast conflict of forces which has been accumulating for a century or longer. The lines of the ultimate struggle were fixed with general clarity, though obscured in some anomalous detail, in what we have called, under short perspective, the First World War. Actually, it was only the prelude to the present finale. But, as is the function of preludes, the broad themes were stated clearly. And for a time, during the struggle and afterward, they were heard and understood. But soon they were forgotten. The Word, though spoken and heard, did not become flesh and dwell among us.

The idea that war is war, and peace is peace, and never the twain shall meet, adds into fallacy as vast and fatal as Kipling's eternal severance of east from west. It subsumes only differences in stages of human action, as in men themselves, and ignores the common influences, forces and connections that run from one to the other and bind them together. The men who make war will make the peace. The nations who fight will make the end of fighting, and what follows. What we think, and do, in the war largely will determine what

we shall think and do in the making of the peace. For that comes too close to the end of battle for discarding altogether the influences the battle itself engenders. And so it is right, it is essential, in the course of hostilities, while the conflict at arms continues, that we give thought to what shall come afterward, if there is to be hope that the vast errors of another day will not be repeated.

That is true not alone for the reasons already stated. It is true also because now we have a created unity, among our own people, and among the United Nations, which we shall not have when the pressures of war have been released, unless beforehand action is taken to perpetuate this force for the stage of the peace. How absurd that we unite for the work of war, when it comes, but divide and separate for the creation and maintenance of peace! How costly "Union Every Twenty Years!" If, with others, we are subjected to common dangers and must join, when they fall, to survive the danger, why should we not unite to ward them off and avoid their incidence? The force of the unity forged in war is one which can be used to prevent its recurrence. But it cannot be so applied if it is lost by waiting until the factors which create it have ceased to exist. In short, the stage of war itself is the first of the stages for making the peace. And in that opportunity, while the soldier performs his function, the lawyer also may exercise his own peculiar capacity, for the common and more permanent advantage of all.

The Lawyer's Task

That work is essentially the lawyer's task. I do not mean, of course, that it is one to be performed for his peculiar benefit. I mean rather that his is the special art by which institutions of government are conceived and erected. He is the instrument through which, with the aid of others, the aspirations of a people devoted to the rule of law are realized in the creation of workable institutions. That high function is at once the special competence and the commonly conceded trust of our profession, more than any other's. The lawyer's art must devise whatever arrangements may replace the soldier's authority, unless indeed the world shall continue indefinitely to be an armed camp. This is now the main business of our profession. Unless it is done, done well, and done while it can be performed, we and the world will have only a mirage of law, because we will have only a mirage of peace. The task has not been begun too soon. My hope, though not my assurance, is that it has been begun soon enough.

It is not yet the time for formulating the plan which will be accepted. That perhaps can be done only when hostilities have ended. But it is not too early for those who are free to advance their ideas, if in doing so one precaution is taken. None now should insist his scheme, in detail or perhaps even in larger outline, is the only workable one. That way lies the division which will defeat the major object. But, from discussion of proposals, tentatively submitted, will come two things at least. One will be a general stimulus to thinking about, and in favor of, the essential principle of effective organization for peace. The other will be thought, and some crystallization of opinion, concerning the larger outlines of the structure desired. In this discussion, one in my station hardly can go far.

But there is real work to be done before the final stage of planning can be reached. And there are a few things upon which most of us now can agree. There are also some obvious dangers we should unite to avoid. Some should be made explicit, that we not blindly run into division over them which will defeat the large objective before the crucial work is done. May I state briefly a few of the things I have in mind? I start with certain premises I believe are fundamental.

Some Affirmative Premises

There is now, among the United Nations and within each of them, a vastly preponderant will for a permanent structure of law in the world for the maintenance of peace.

Any such structure, to succeed, must include at least all powerful nations, that is, all nations capable of disrupting the peace and the law of the world. So long as one nation capable of precipitating a conflict having potentiality for spreading to world—or continent-wide proportions remains outside, the structure cannot be secure. That means, at the least, any such union at the beginning must include China, the British Commonwealth, Russia and the United States. If any one of these remains aloof, there can be no real assurance of success. For each will have the power, when the conflict ends, if it maintains its strength, to defy the others in large regions of influence or aggression.

The defeated nations cannot be kept in perpetual subjection, however exhausted they may be temporarily when fighting ends. Nor can, or should, they be exterminated. Germany and Japan are peopled with virile races. In time, as before, their strength will recuperate. When that happens, they too must be received into whatever union may be formed, and eventually accorded full and equal participation. Otherwise, the second premise will apply in their cases as in those of other powers. But their admission must await a period of probation which will demonstrate their will to peace.

Small nations, it has been shown twice this century, can put no trust alone in treaties, when they are vulnerable to attack from aggressive larger ones. Nor do Switzerland and Sweden prove the contrary. They have protection, large or partial, in peculiar locations of natural advantage for defensive purposes. The only general security for small nations lies in their adherence to such a union.

Whatever union is formed cannot be made out of

whole cloth. This means some type of federated system. There are existing examples of success, upon a lesser scale, in the British Commonwealth of Nations, the Union of Soviet Socialist Republics, and the United States. These work, though they differ in structure and in tradition.

The institution must provide instruments for decision of conflicts arising among the member nations, and effective sanctions for enforcement when decisions have been rendered. The creation of machinery for enforcement presents the most serious problem.

This implies as a corollary that each member must surrender a portion of its sovereignty. That is no more than acceptance and extension of the rule of law to nations as it has been extended to men and to states. It is an expansion of the principle in the British Commonwealth that each dominion, and all its citizens, owe allegiance to the Crown. In our analogy, it extends the principle of supremacy of the Constitution, both as to citizens and as to states, to the nation itself.

Negative Premises

I turn now to premises of a negative kind.

The first is that institutions of peace cannot be made by a treaty, any more than our own were made by the document we call the Constitution. Not as much. A treaty may formulate them. Only the adherence of the people to whom its terms are applicable can make them living institutions.

A treaty of peace is in truth not a contract. It is an imposed obligation. That is why such treaties so often turn out to be germinators of other wars. The rare exception is the most generous, and, therefore, the most just, of treaties. But, at best, a treaty is, from the viewpoint of the vanquished, a forced assumption of duty. And it is always an expression of the victor's spirit of triumph, however generously made, a symbol of defeat to the conquered country.

Peace cannot be made by such an instrument. Durable peace is not the work of a moment, or a month, or a year. It is rather an unending effort, a continuous process. Eternal vigilance is the price of peace as it is of liberty.

Treaties Do Not Guarantee Peace

All this I mention that we may begin to discard the idea that peace is made by a treaty. That only formally marks the end of hostilities. And the end of war is but the beginning of peace, not its creation. War must be ended. And, therefore, treaties must be made. But, we have now learned, or should have learned, we can not put our trust in any treaty as a guarantee of peace. We have learned also that a treaty can be itself a source of new and continuing conflicts, ending in new and horrible wars.

For this reason, not because it brings peace, whatever treaty may be made must not be cast in the terms or spirit of revenge. For that only generates the spirit of rebellion, which breaks loose when strength has been gathered again to resist. This is the first hard task—beyond the hatreds created by war, to draw from the deeper springs of justice and generosity, that new hatreds be not created and thus the vicious circle rounded again.

I specify two things. The next treaty should impose no "mandate" of any conquered area in the hands of any single, victorious nation. Experience in the last "peace" has shown that "mandates" so reposed, in a spirit of trust, become in some instances, at any rate, but means for abusing the confidence and annexing the territory so entrusted for administration.

The nations defeated will be what we have come to call the "have not" nations. They were that before this outbreak. Their own resources were not equal to sustaining their peoples. They were cut off from colonies and from free or fair access to other nations' raw materials. They turned to the smaller, the more defenseless nations, to take them when necessary by force. The conditions within which they were hemmed gave both occasion and susceptibility to the temptation to plunder. The last treaty imposed both impossible burdens of reparations and intolerable conditions of living. Unless the consequences of that policy are to be repeated, the defeated nations must be given adequate access to materials of others for supplying their essential civilian and peaceful needs.

I state two other negative conditions.

Peace cannot be made in partisanship, or in its spirit or for partisan advantage. Nor can it be achieved by pessimists. At bottom there must be the belief, the faith, that its creation is possible. And in this, rather in what I fear is its absence, as a settled conviction of strength which will not degenerate into weakness, is one of the gravest dangers. Wars are not won by men who think that victory is impossible. Nor can peace be accomplished by men who doubt its achievement, who look only at the obstacles and find their sum insurmountable. Sincere men, here and elsewhere, hold to the view that the differences among men, among nations, among races and cultures, and customs and religions, are so great they cannot be subordinated in a working, successful effort to live with each other without recourse to force. Others, more cynical, regard man as a fighting animal little above the beast except in cunning. These we cannot change. The former we must refute.

Their spirit is not the spirit of the men who welded disunited states into the United States. For, when England lost its colonies in this country, we did not acquire a nation. For more than a decade, we were losing our new-found freedom in bickerings and backbitings, in what Carlyle calls governing impotences among ourselves. And there were men, some among our greatest heroes of the Revolutionary period, who would have nothing to do with the effort to overcome

these dividing and stifling differences.

The Basic Premise and the Power to Decide

We are men of law. By our adherence to this profession, we implicitly assert our faith that the rule of law, in all its imperfection, is preferable to any rule by force. That premise we accept, with the promise it contains that time will bring perfection where imperfection holds sway. We accept it for men as individuals in society. In England and in the United States, we accept it for states and for dominions, nations in all but their subordination to the principle of equality under the law with other nations.

If that premise is sound for men, if it is sound for states and for dominions, it is sound also for nations and for commonwealths of nations. It is a universal principle, to which now we have no other alternative but periodic return of strife which even the strongest, the most secure among nations cannot survive in democratic tradition. As men of law we owe that principle our undivided, unlimited allegiance. And, if we have not the faith for its further and essential extension, demanded by the conditions of our time, we shall not long maintain our place or our function in the spheres they already occupy. For myself, I believe the task can be done.

I have one further premise. It is that the decision lies in our hands, ultimately in the hands of the American people, more immediately in the hands of the American lawyer. It is my judgment that the other nations of the united front are ready for such an adventure and that, to secure it, they will concede whatever fair terms may be needed to secure our accession. I am sure too that the vast majority of our people now stand committed to the principle that an effective organization for maintaining peace should be created when hostilities cease. They do not want to repeat the present sacrifice.

But I am not sure the commitment is permanent. I have doubt it will stand firm when armistice releases the pressures which now unite us to other peoples and sustain our good intention. Once before we had the decision. Then, too, before the armistice was signed, and for a time afterward, we had the will to organize for peace. And, in the beginning, our people were not divided seriously about it by partisan policy or other destroying force. But we waited too long. Lethargy accumulated as we drew away from war. We became involved in discussion of detail, magnifying this beyond the major end. Partisan conflict arose, not at first, nor indeed specifically at all for some years about the central need and end, but over how and by whom and under whose auspices it should be done. Costly errors were made on both sides. And so we became afraid—afraid to take the chance. Stronger, more secure than any nation, with others exhausted by their longer share in the war, we feared for the loss of some of our sovereignty, not reckoning we might lose it too by the opposite course we came to pursue. Thus we lost the main chance, and it was not long until it had faded away in circumstances, engendered perhaps by the loss itself, beyond our power to control or reverse. The direction of events had been set for another holocaust.

Now we pay the price for losing that chance. Only one thing can make that payment worthwhile, that by it we may purchase immunity against making it again. Who knows whether we would be able? If we are to have this immunity, we and the other peoples who have voice in the decision must not repeat the former mistakes. There must be formed, and formed soon, an invariable determination in the minds of our people, an overwhelming, irresistible, unchangeable public opinion that the main purpose of this war, and of the last one, be not defeated again; that this object shall not be side-tracked or lost, whether in lethargy, in confusion, or in misunderstanding. This means the creation of a firm allegiance to the bottom principle of our profession as a universal one, to the idea that if we will have peace and law at home, we must have them abroad. It means too the creation of the will to action, in order to secure them, and maintenance of that will against all obstacles and oppositions until the object is accomplished. The decision in the end will be made by our people, who made it finally before.

Unity of Outlook and Resolution Needed

But, before that, it will be made by the American lawyer. If we divide and debate about the basic thing, if we put matters of detail and method above it, if we rest upon our oars while the flood of events rushes on, carrying us unguided, unchecked, with the current, we shall not make port safely. Upon this issue, if we have a united opinion, the people will follow. For they know our business and our tradition are twofold. They are in the creation of power to limit it, in organizing government to provide protection for freedom. That principle applies in whatever realm law, as law, may operate. It applies among nations as among states and among men, unless sheer power rules. What we propose, and what the world must have, is the rule of law, and that means limited authority, equal to the essential task and no more. If our people believe we of the legal profession, here and elsewhere, can create that kind of power and can devise restraints which will keep it confined to its proper object, they will follow our leadership.

That is a magnificent challenge. No greater has been given to any generation of lawyers. It is a responsibility of equal proportions. And it is ours, whether we succeed or fail.

The immediate duty is acceptance of the leadership

events have put upon us. That requires first the crystallization of our own unity of outlook and resolution to transmit it to our people. That much should be done at once. And no agency can forward this more than this Association. I am encouraged by the action already taken by your Board of Governors. I hope similar forthright stands may be taken by the body as a whole and by the organized Bar everywhere. The American Law Institute too adds its effort in a related phase. There is discussion up and down the land. All this makes a good start.

But more than discussion and statement of ideals is needed. By unrelenting effort, an attachment to them, a demand that they be brought to being in living institutions, must be formed, unbreakable and imperative upon those who will have in hand the formulation and the execution of our official policy. No mere majority will do. This is no task for 50-50 or 60-40 division. The sentiment must be overwhelming, the insistence irresistible. To accomplish this is the first, the immediate phase of the lawyer's task. It will require all our effort, organized and individual. It is the first order of our business.

If it is achieved, then will come the more technical task, the phase more nearly and fully within our special function. For, not barring the participation of others, it will be the lawyer who will work out the framework of the new institutions, and the limitations to be imposed upon the newly created power. In that phase, we have preeminent example in the work of the men who welded our disintegrating states into a nation. Their difficulties appeared insurmountable. Their differences, and those of the people they represented, were deep. There were jealousies, suspicions which threatened to forbid any agreement. Patriots who by voice and arm had worked valiantly to create our freedom, walked out of the convention, went home, and fought to prevent acceptance of its handiwork. The voice which had been loudest and clearest in the call to arms was raised in equal protest against the work of union. Who now would say that Patrick Henry was not as wrong in his last as he was right in his first great protest? In the one he read events and their direction right. In the other he had lost touch with their meaning. So now we have patriots, men as sincere as you and I, whose vision does not run with the ways of time; who have not faith to believe that lawful power can be created and restrained; who trust not the future or the men who will have its course in control. Respecting them as we should and honoring their purpose and their motive, we cannot follow their thought. For it will lead us in the way the dissentients would have led our forefathers, with equal sincerity and patriotism, when the issue was whether our institutions should take their present form. The hopeful example, the one more true with the course of events, is that which was set by the men who prevailed when that issue was resolved. Their work was creative. It accepted the challenge and fulfilled the need of the time. It was done, as creative work always is done, in the spirit of hope, with faith in the future and with confidence in the capacity of men to live and work together, to resolve their differences, and to create and maintain a framework for existence in which they can find a satisfying, if not a perfect, way of life.

In that spirit, and with like confidence, the similar task of our day must be done. I hope, I have faith it may be so done. There are some things which give ground for this belief, advantages we did not have before.

One is the spirit, the mood, with which this war is being fought. As I sense it, there is a large and significant difference. In the last war, the old spirit of adventure in fighting prevailed. There were the wild enthusiasms of wartime patriotism, stirred to peaks of emotion where reason lost all sway. Men were anxious for the fight, until they experienced it, as boys are lured by sport. I do not find these ebulliencies in the present struggle. We do not have the parades, the cheering, the high-stirred emotions of that time. The enthusiasm, the fun, the sense of zestful adventure, have gone out of war. There is, I think, not less of determination and the spirit to win. But it is a calmer spirit. Reason holds greater sway. Men know there is a hard and nasty job to do. They devote their energies and their lives to its doing without reservation. But they know they play no game. The business is deadly serious, and so it is taken.

I think this change is for the better. It means we are keeping and using our heads. It means, perhaps, we are fashioning less of hatred, even in the heat of battle, and, therefore, will have less to overcome when the time comes for making the peace. I believe we shall come out of the war a more sober people than ever before. And I believe that means we shall approach and resolve the problems of the post-war world in a saner spirit, one in which reason may have force to put down passion and begin a new era in world relations.

There are some disturbing signs. I shall not stop to discuss them. In part, they come from the strains of a war-disrupted world. In part, they are evidence we have not yet attained full stature in democracy. But perhaps the miracle is there have not been more. For this we may be grateful, without failing to recognize the occurrences that have taken place as the essential failures they are in our way of life.

These things are the shadows. There is much more light. A new day is dawning. And it is in the hope of that dawn, not the shade of the clouds here and there, I bid you God-speed in your task. If I know you, you will not fail.

THE LAWYER IN THIS WAR

By MAJOR GENERAL MYRON C. CRAMER

The Judge Advocate General, United States Army

IT is indeed a happy privilege to address the Assembly of the American Bar Association. This annual meeting of the Association is amply illustrative of the manner in which the organized Bar zealously follows the ideals and traditions of our profession, founded upon and dedicated to the cause of public service, whether in time of peace or in time of war.

Two years ago any discussion before this Association of the Army lawyer and his work would have seemed far removed from the direct professional concern of most members of the Bar. We were then on the very threshold of war and yet its realities were somewhat remote. In the ensuing period of two years, a veritable host of the legal profession have entered the service where they are now unselfishly contributing their ability and talents to their country's cause, not only in that branch of the Army which is my present responsibility as The Judge Advocate General of the Army, but also in many other fields related to the prosecution of this war. It has been my very happy privilege to be closely associated with lawyers from every state in the Union in the work of building an adequate legal organization to meet the ever increasing needs of our expanding Army. I desire to take this opportunity to acknowledge the splendid work which is being done by those members of the legal profession in our branch of the service.

The Army Lawyer in The Judge Advocate General's Department

Not long ago, in one of our professional journals, I chanced upon the following statement: "With the fate of the nation in the balance, there is call for business men, medical men, architects, engineers, and for the clergy, *but there is little call for lawyers.*"[1] It was also said that lawyers are being "invited into cold storage when their country needs them most." Such opinions gave me grave concern because from my point of vantage in the Judge Advocate General's Department I have seen vast opportunities for the American lawyer in varied types of service closely related to the war. The gratifying manner in which the profession is responding to its opportunities strengthens my conviction that when the record of this war is finally written, and all the facts can be frankly disclosed, the American legal profession will have just cause for pride in the manner in which its members responded, even beyond the call of duty, to serve the effort of the war in keeping with legal abilities, training and experience and in keeping with the high calling of the profession of the law.

In commenting briefly upon some of the contributions of the lawyer to the great common effort upon which we are engaged, it is perhaps but natural that I should speak first of the work being performed by the Army lawyer in the Judge Advocate General's Department. In spite of its expansion since Pearl Harbor, the Judge Advocate General's Department is still one of the smallest branches in the military service. It consists of approximately 95 officers in peacetime, and has been expanded to 1310 officers as of August 14, 1943. New members of the Department have been carefully selected, on the basis of education and experience in civil life, from thousands of applications on file in the Washington office of the Judge Advocate General. They constitute an excellent cross section of the American Bar. The great majority of reserve officers and civilians who enter the military service for assignment to legal work are trained for duty at The Judge Advocate General's School, first established in Washington through the kindness of National University Law School, and now located in the famed law quadrangle of the University of Michigan. The type of training given in the school is generally adapted to preparing the judge advocate for all phases of his military work. Particular emphasis is given to the duties performed by a staff judge advocate of a command as an incident to the administration of the system of military justice of the Army.

Legal Supervision of Military Justice

The transition of millions of men from civilian life to military control, making them subject to the Articles of War, represents a major social phenomenon. To train these millions of men and to direct their efforts with maximum efficiency toward the grim task of war, an Army must have discipline. An Army without discipline is a mob and discipline cannot exist unless all lawful orders are accorded implicit and immediate obedience. The maintenance of discipline in the Army requires the sanction of the penal provisions of the Articles of War. The imposition of punishment, when necessary, must be prompt, certain, uniform as between offenses of like degree, and neither too light nor too severe. By supervising the system of military justice,

Address delivered to the Assembly—Second Session, 66th Annual Meeting, August 24, 1943.

1. Llewellyn, "The Crafts of Law Revalued," 15 Rocky Mountain Law Review 1-7 (1942).

Service Flag of the American Bar Association

including the system of statutory review of proceedings of General Courts Martial, the Judge Advocate General's Department works toward the end that no one shall be punished except according to law after a fair and impartial trial. To this end staff judge advocates, aided by the training received in the Department's school, are making major contributions. With the aid of military orientation work and intensive study of the procedural and substantive aspects of military law—judge advocates have been efficiently prepared and ably execute their arduous duties. The commendation of their work which I receive from their commanding officers in the field bears testimony to the manner in which they discharge their responsibilities.

Other Functions of Judge Advocates in the Military Establishment

Military justice is not the only responsibility of judge advocates. The Judge Advocate General functions as the chief legal adviser of the Secretary of War, the Under Secretary of War, the Assistant Secretaries of War, the Chief of Staff and the entire military establishment. In such capacity advice is given upon the need for new legislation, and upon the merits and faults of pending legislation affecting the Army; thousands of formal opinions are rendered each year on a great variety of legal questions pertaining to the widespread activities of the Army. Judge advocates of the United States Army throughout the United States and all over the world are also engaged in these essential activities of the Department. There are legal matters pertaining to procurement, contracts, claims, lands, patents and all of the usual types of legal questions with which the busy practitioner is confronted, as well as that considerable body of law relating to the Army and the conduct of war which is found in statutes, Army Regulations, Executive orders, directives which govern the Army, and international law. Some of the most interesting and complex problems which require the counsel of judge advocates arise under the law of war. This body of international law, subscribed to by civilized states in the Geneva Convention of 1929, consists of the rules governing the conduct of hostilities, the rights of prisoners of war and the duties of their captors with respect to them; the penalties for violations of the laws of war; armistices; military occupation; and many other perplexing situations created by actual warfare. In the Office of the Judge Advocate General in Washington, in branch offices in overseas theaters, in task forces scattered over many inaccessible points of the earth's surface, at practically every type of military installation, these problems are arising and are being solved by the busy Army lawyer of the Judge Advocate General's Department.

Officer Candidate Schools for Judge Advocates

In keeping with the policy of the War Department, under which the various services are encouraged to recruit officer personnel from men in the enlisted ranks wherever possible, and in recognition of the fact that thousands of qualified American lawyers have entered the service and are now to be found in the ranks, the War Department has recently authorized the establishment of an Officer Candidate School for judge advocates at Ann Arbor, Michigan. In the future, most of the Army lawyers who serve in the Judge Advocate General's Department will be procured through this program, except, of course, in those instances in which specially qualified civilians of more maturity and experience may be desired for a particular job. Candidates for the school must have attained their twenty-eighth birthday, be graduates of a law school, and in most cases will be required to have had at least four years of active legal practice. Maximum quarterly capacity of the school will be 150 students. Commissions given to students completing the course will be in the rank of second or first lieutenants. It is believed that the Officer Candidate School will provide the Judge Advocate General's Department with the necessary personnel and that its establishment will furnish a splendid opportunity for a limited number of qualified men to perform military duty related to their professional training and background.

Legal Assistance under War Department and American Bar Association Sponsorship

A major activity of the Judge Advocate General's Department which offers great opportunities of service for the American civilian lawyer is the plan, now in active operation under joint sponsorship of the War Department and the American Bar Association, which provides legal advice and assistance to military personnel in the conduct of their personal affairs. A recent directive of the War Department placed the organization and direction of the plan under the supervision of The Judge Advocate General, who is collaborating with the Committee on War Work of the American Bar Association. Staff judge advocates in the respective service commands throughout the Nation in turn will cooperate with the committees on war work of the several state bar associations within their respective service commands. Legal assistance offices have been or are being established throughout all military installations so that military personnel may obtain gratuitous legal service from volunteer civilian attorneys and from lawyers who may be available in the military service. Many of the problems of discipline and morale directly result from worry by military personnel over their personal affairs which often involve legal questions. The elimination of such worries will solve a major personnel

problem in the military establishment. This plan significantly emphasizes the underlying policy that:

> Such gratuitous legal service should not be considered as charity but entirely as a service of the same nature as medical, welfare, or other similar services provided for military personnel.[2]

The civilian lawyers who cooperate in rendering this legal service to military personnel are encouraged to visit the legal assistance offices in the respective military commands, during certain stated hours, in order to make themselves available for interviews with such military personnel as may need or may desire legal counsel. In some cases the military personnel seeking legal advice are directed to the offices of the assisting lawyers. Established agencies, such as the legal aid offices, are also utilized in carrying on this service. The entire program presents an excellent opportunity for the profession, on a purely voluntary basis but through the leadership of the organized Bar and with full support of the War Department, to make a real contribution toward assisting the men in uniform who, in many instances, are not able properly to handle their own personal affairs. It should be mentioned in passing that the legal assistance contemplated under this plan does not include advice or assistance to military personnel in any case which may be the subject of court-martial investigation or charges. Such matters are handled by the competent defense counsel appointed for the accused pursuant to the Articles of War.

Value of Contributions to the War Effort by Civilian Lawyers

There are many other avenues through which the profession of the law is rendering services of the highest order and value to the war effort. As a leader in his community the lawyer moulds public opinion on the vital issues of the day affecting both the home and war fronts. By virtue of his experience and the nature of his tasks the lawyer is uniquely qualified to interpret our government's position toward many trends in world affairs and to aid in achieving unity in the acceptance of such position. Many of the tasks which fall to the lot of the lawyer are essential to the maintenance of a sound civilian economy, whether in his private practice when he advises a war contractor or in the public service. Standing shoulder to shoulder with other leaders of American life, the busy lawyer contributes to the success of our war loan drives. On draft boards and in appeal agencies the lawyer is rendering invaluable assistance in the administration of the Selective Service System. The lawyer is found busily engaged in work essential to the preservation of our civil liberties despite the stress of war conditions. I have no doubt that the lawyer has played a prominent part in explaining the significance of the Nazi saboteur case in the preservation of our American ideal of civil liberty. The lawyer is in a position to explain to the rank and file of American citizens why in a Nation at war no effort was spared to afford the defendants in that case every possible means of defense in a fair and impartial trial before the Military Commission; and why, in a manner characteristic of its spirit and traditions, our highest court convened quickly, at the behest of the defendants, in extraordinary session last summer to hear and weigh expeditiously the arguments of counsel on appeal. Such conduct was the living example of the ideals for which we fight.

Some Aspects of the Saboteur Case

I have been requested to include a few remarks concerning the now famous saboteur case.[3] As you know, the record of the trial has been sealed by our Commander in Chief, the President of the United States, until after the war. Most of the salient facts of the case have been made known to you through the press. However, I will at this time depart from my subject to interpolate a few comments upon that trial which may be of interest to you as lawyers.

In the hour preceding dawn on June 13, 1942, four of the saboteurs debarked from a German submarine in which they had traversed the Atlantic from Lorient, France, the submarine base which has been the target for intensive bombing in recent months, and, by means of a collapsible rubber boat, landed on the beach at Amagansett, near the eastern end of Long Island. The story of their encounter with a coast guardsman, burial of their implements of destruction and journey into New York City is well-known.

Four days later, on June 17, under similar circumstances, the remaining four of the group landed on the beach at Ponte Vedra, south of Jacksonville, Florida, proceeded to Jacksonville and there dispersed to various points in the country.

By June 27, all eight had been apprehended by the FBI and, on that date, their capture was announced. Five days later, on July 2, the President issued a proclamation denying access to the civil courts to a described class of enemy agents who enter our country in time of war, and, simultaneously, the President appointed a Military Commission to try the eight saboteurs and named counsel for the prosecution and for the accused.

In keeping with the swiftness of events, the Military Commission convened and began hearing arguments and evidence on July 8. Although no time was lost or wasted, the Military Commission made certain that the defendants received a fair trial and sixteen days of hearings were consumed before both the prosecution and defense completed the introduction of evidence, an average of two days for each defendant. The Commission, after due deliberation, recorded its findings and sentence, and, pursuant to the directive of the President, transmitted the record to him on August 3

2. Par. 3, W.D. Circular No. 74, March 16, 1943.

3. *Ex parte Quirin et al*, 317 U. S. 1, 63 Sup. Ct. Rep. 2, 87 L. ed. Adv. Ops. 1 (Decided July 31, 1942, extended opinion filed October 29, 1942).

for his action thereon. Five days later the President announced that six of the saboteurs had been executed, that the seventh had been sentenced to imprisonment for life and that the eighth had been sentenced to imprisonment for thirty years. The case of the saboteurs was thus completely disposed of within less than two months from the day on which the first of them set foot on American soil.

But these men, who came here to destroy free institutions, did not have consideration of their cases confined to the military, and this interval of less than two months included time consumed in the scrutiny and expressed approval of the proceedings before the Military Commission by the highest civil court of our land. Prior to the conclusion of the arguments before the Commission, counsel for seven of the defendants filed a motion directly to the Supreme Court of the United States for leave to file a petition for a writ of habeas corpus. In the gravest times of war, our highest court convened quickly during midsummer in extraordinary session to hear and weigh the arguments of counsel for the petitioners and the government, in a manner characteristic of its spirit and traditions. On the evening of July 28, 1942, the day before that set for a hearing on the motion before the Supreme Court, counsel for the seven accused presented a similar motion to a judge of the United States District Court for the District of Columbia, by whom it was refused instanter.

Counsel for the petitioners in their argument first took the position that jurisdiction for the issuance of the writ existed in the court as an aid to its appellate jurisdiction to review the action of the district court. During the course of the argument, which occupied two days, July 29 and 30, the petitioners, after having informed the Supreme Court of their intention in this regard, perfected an appeal to the Circuit Court of Appeals for the District of Columbia from the order of the judge of the district court, and then filed petitions with the Supreme Court for certiorari to the circuit court of appeals before judgment. An interesting sidelight on this phase of the case is the fact that the petition for certiorari was actually filed in the Supreme Court at 11:59 a.m., on July 31, 1942. The Court convened one minute later, granted the certiorari and announced its decision. The original motion in the Supreme Court was abandoned by the petitioners, with the consent of the Court, and the decision of the Court affirmed the order of the judge of the district court. The decision, in substance, was that the Commission was lawfully constituted; had jurisdiction of the offenses charged, and had jurisdiction of the persons of the defendants. Thus, the cause which included the presentation of a motion for leave to file a petition for the writ in the district court, an appeal to the circuit court of appeals, a petition for the writ of certiorari, argument and final decision—was disposed of by the civil courts within the brief space of approximately sixty-four hours.

Now to go back to my subject.

The Lawyer's Role in Perpetuating American Ideals

The lawyer is also to be found on speakers' bureaus engaged in the dissemination of necessary information. His influence in shaping and translating into action essential economic controls of wartime is manifested on every side. His generosity with his time in assisting with the conservation of the practice of his brother attorney, who is in the military service, is evident in many of our communities. The lawyer has rendered heroic assistance to the public authorities in the detection and suppression of disloyal activities. In the varied activities related to civilian defense the lawyer plays his part. In the field of international relations the American Bar fosters that international good will which makes for understanding and friendly feeling between nations. A visible testimonial to this latter activity is the success with which the Inter-American Bar Association and the American lawyers, who are active in its work, have contributed to the achievement of a better understanding between the lawyers of the Americas. In countless ways the lawyer is giving service in admirable keeping with his responsibilities. Perhaps a large measure of the lawyer's service is intangible, but the lawyer is in the best position of all the professions to appreciate and understand the meaning of the issues of this war. The lawyer understands that the very future of democratic order is at stake throughout the world. In the last analysis the issue of this war is the preservation of a regime of justice under law. This clash of arms will be for nought unless out of this brutal struggle comes equal justice for all under law.

The honorable Charles Evan Hughes, former Chief Justice of the United States, recently pointed out:

> We are in the midst of a terrible struggle to preserve the very foundations of liberty, and we are aware more keenly than ever that those foundations can be made secure even in the victory to which we confidently look only by cherishing the ideals of justice, national and international, and by maintaining institutions through which those ideals may measurably be realized.[4]

The Task Ahead—Administration of Justice under Law

This war is being waged for the perpetuation of basic freedoms made possible only through individual liberty and justice under law. When victory is ours, and ours it will be, the role of the lawyer in the task of reconstruction will be an important one. Hand in hand with the statesman, the lawyer faces the challenging call to assist in restoring the administration of justice to those portions of the world in which all semblance of law and justice have, to the ignominy of the human race, been completely obliterated. There is reassurance

4. 67 A.B.A. Rep. 314.

in the realization that in the daily tasks which relate to the winning of the war, although he may not always be in the actual scene of battle, the American lawyer is contributing to a hastening of that day when might will be destroyed and right will be restored.

In war, as in the peace to follow, the lawyer's part is and will continue to be an important one. The role of the lawyer with respect to these problems was clearly stated in a recent editorial appearing in the AMERICAN BAR ASSOCIATION JOURNAL wherein it was said:

> The people of America and the peoples of most of the world yearn for a system of justice according to law. History proves that there is no other possible alternative.
>
> The edifice of the temple of justice must be designed by lawyers. They are best fitted to be the architects. They have studied the history of the slow evolution of civilization. They have studied the growth of our legal system which seeks to regulate and control human life with all its passions, needs, conflicts, desires and aspirations. They know that the law is not yet a perfect instrument but they believe it to be the best instrument thus far forged. Best of all, they are imbued with the fiduciary instinct which simply means that they always think in terms of the welfare of their client and in this case their client is the nation.[5]

Members of the American Bar Association, there is much hope and promise in meetings of lawyers such as this. There is abundant evidence that the Bar of America is alive to its responsibilities and its opportunities. This is heartening in its effect upon those of us who have seen long service in the Army. It is heartening to all who are sincerely devoted to the ideals of justice and liberty that have made America great. In our daily efforts, in the trying days that still lie ahead, let us toil and sacrifice that democracy may live, that its principles never die, that equal justice for all under the law may prevail and be preserved throughout the world. In common with millions of fellow Americans, as we survey the job that lies ahead, let us take to heart the admonition of Phillips Brooks when he said: "Do not pray for easier lives—Pray to be stronger men—Do not pray for tasks equal to your powers—Pray for powers equal to your tasks."

5. 29 A.B.A.J. 273.

A Young Lawyer-Soldier States His Fighting Faith

A MOVING statement of the faith for which he lived, fought, and died, was made by a young Los Angeles lawyer, Lieutenant Wallace M. Bonaparte, U. S. N. A few days before he was killed in action in the South Pacific, he wrote a letter to his parents, Mr. and Mrs. Joseph Bonaparte, and sent it to his uncle, for delivery in the event of his death. When the tragic word came, this unforgettable message was given his father and mother:

"My dearest Parents:

"I had hoped never to have to write this, for over a long period, even after being sent overseas, I had been safe and secure, but lately I have been in some tight spots. I do not expect to die in this war—no one does—but I am playing on my luck more and more. Only in the event it does not hold out will you get this letter.

"At first when I knew I was in danger I thought a lot about it.

"After a while I ceased to think of dying. Now I never do—except in moments like this, when I do so for a definite purpose. I am inured to death. If it comes I am mentally and morally prepared. My primary thoughts out here are of life; of winning the war and returning someday to you and to my dear wife.

"I am deeply conscious of what I am fighting for and would not sit at home during this war if I could. What I fight for is not an abstraction to me. It is not any vague ideal of freedom or democracy. I reduce it to the most elemental of emotions, that of man's instinctive, dominating, intense desire to protect those individuals whom he holds dearest. I don't claim that this is the reason for any other man's participation in the war. It is my own.

"So the fact I may die while I am protecting you does not appall me in the least. If I do I shall be happy to have done what I have to preserve your lives and way of life, and all of the sacrifice and effort on your part to rear me as a good citizen, educated and successful, are not wasted.

"So although you will grieve, do not, please do not, be bitter. Know that I am smiling here as I write at sea—that I am content that I am doing what I want to do and must do. Be proud that you did a good job of rearing me to do what was my chief purpose. Live out your lives to the fullest, without loneliness or pain. Wherever I am, I will be at peace, and if there is a heaven, I have a clear conscience and clean soul. And know, also, that I love you above all and that to me you are the grandest, dearest people in the world."

FOREIGN POLICY

By HONORABLE J. W. FULBRIGHT

United States Congressman, Arkansas

YOUR President requested in his invitation that I present to you some of my thoughts concerning the proper relations of this nation with the other nations of the world. I do not have the temerity to express these thoughts as being those of an experienced international lawyer. I thought, however, that coming from a Representative of an agricultural district, of which there are many in Congress, they might be of interest to you as an indication of what the common citizens of this country are thinking about the war and what we should do about it.

Many of us feel in our bones, so to speak, if not in our heads, that if we are to survive in this world as a republic of free men, we must do something about recurrent total wars. We feel that we are sacrificing our finest boys and expending our material wealth and resources for something we do not quite understand. We know that we must do it, yet we want so very much to understand *why* we must do it, and *what* is to be gained by our sacrifices and *how* we may avoid in the future the necessity of such senseless destruction and suffering.

The obvious answer to why we must fight *now* is that we were attacked and must defend ourselves. But why were we attacked at this particular time? Many abstruse and learned volumes have been written on the causes of war, but if any single circumstance can be said to have caused this war, I think that Hitler's belief that his opponents would follow the "one-by-one" road to destruction should head the list. In spite of all the alleged social, ideological or economic causes of war, I think the decisive cause is the conviction of the aggressor that he can win. The principal consideration in the German mind in arriving at this conviction in 1939 was, I am sure, the each-for-himself, the one-by-one, isolationist philosophy of the United States and the other non-Axis countries. It makes one shudder to think how close to complete success Hitler came after the fall of France. From such a demonstration surely we now recognize that individual defense is in the long run a physical impossibility and, therefore, that our only hope for security is in collective action.

If it is true that the decisive cause of this war was Hitler's belief that the United Nations would not unite as they have, but would go down to defeat one-by-one, then the answer to "what may we gain from this war" should be clear. We shall have acquired the experience and knowledge by which we may prevent, or at least make less frequent, the recurrence of these appalling tragedies. The immediate fruit of our victory will be the prevention of our enslavement by the Nazi and the Jap, a vastly important, but somewhat negative benefit. Since, however, we do not desire the conquest of large territories, the only great and positive good that we can hope to achieve from our victory is the assurance of a peaceful world in which man's energy and genius may be devoted to creative and beneficial, rather than to destructive and savage, enterprises.

I believe that our recent experiences and the history of government over the centuries, which is largely the chronicle of man's efforts to achieve freedom by the control of arbitrary force, indicate that *only* by the collective action of a dominant group can security be attained. It was in this belief that I introduced House Con. Resolution 25. Perhaps the most significant thing about it is the fact that it originated in the House of Representatives and is, at the moment, a non-partisan measure. Both are important. Our foreign policy must be consistent, and must not be a partisan affair shifting with every election. Further, since the House of Representatives is at all times more nearly reflective of the will of the people than any other body, it should play a part in the formation of fundamental policy. Only with Congressional sanction can the other nations of the world rely with assurance upon commitments of our Executive. The adoption of this Resolution by the House and the Senate will create a precedent for the further participation by the House of Representatives in the matter of foreign policy and give that policy stability and force.

This Resolution reads as follows:[1]

> Resolved by the House of Representatives (the Senate concurring), that the Congress hereby expresses itself as favoring the creation of appropriate international machinery with power adequate to establish and to maintain a just and lasting peace among the nations of the world, and as favoring participation by the United States therein.

This simple statement is, I believe, the first step in the development of a foreign policy which should enable us to achieve a greater degree of security than we have hitherto had. It tells the world that the United

Address delivered before Fifth Session of Assembly, Annual Meeting, August 26.

1. The text given is that before the final amendment by the House Committee on Foreign Affairs.

States recognizes that any organization for peace must be based upon *power* adequate to enforce peace, and that the United States will share both in supplying that power and in the responsibility for the exercise of that power. One may say that this is a commitment that this nation undertakes to participate with the other nations of the world in a genuine and bona fide effort to find some reasonable means to solve international disputes by methods other than by war.

Much has been said about a provision for the use of force. The words "power adequate to establish and to maintain a just and lasting peace" not only envisage the use of some kind of force, but may also include the power, if necessary, to control the productive capacity of instruments of aggressive warfare. The traditional "police force" which disturbs so many people may not be nearly so important as control of strategic materials and productive capacity.

A First Step

This commitment to participate is, of course, only the first small step in the process of creating a system of international relations that makes sense. Some people have been misled by the false impression that our own Constitution was suddenly, as if by magic, produced from the minds of our founding fathers. Nothing could be further from the truth. Rather than being a document of original principles or ideas, it was more in the nature of a codification of principles and institutions of human freedom which had been evolving through countless centuries. Millions of brave men and women, of many lands, had sacrificed their fortunes and their lives in the struggle for human freedom which that instrument so beautifully and so perfectly described and established in this great continent. It is important to remember that institutions and principles for the government of men, whether they be of morals, economics or politics, do not spring full blown from the minds of mortals. They evolve, and all too slowly, but in the evolutionary process they acquire *validity* and *stability*. With this in mind, it seems to me that, in venturing into the uncharted realm of international controls, it would be a mistake to attempt a complete blueprint which, I am confident, would sooner or later prove too restrictive and perhaps fatally so. The first step, therefore, should be the adoption of broad and basic principles. After that step is taken, then may we consider the succeeding moves to be made.

It might be more helpful to our purpose to discuss some of the things this Resolution does not contemplate. Many opponents of collective security seek to confuse the issues by proclaiming at length that we do not want an international WPA. The question of relief and rehabilitation has little to do with the formulation of a foreign policy or the creation of machinery to keep the peace. It may be that relief in the form of food or other goods has a place in military operations in occupied countries or in the settlement of this particular war. But this war is but a tragic and horrible episode which one of these days must end. A proper foreign policy together with the machinery to keep the peace is continuing in its nature; it does not consist of sporadic instances of emotional altruism or niggardly selfishness. To be successful it will require the *assiduous daily attention* of the best brains of our country. It is brains and leadership that we must supply and not gifts of bread and milk and money and oil. It is not contemplated that we, the people of the United States, are to give our goods to others, that we are to raise the standards of living of the peoples of the world, or even to give them all a free and democratic government. If we can contribute leadership and our fair share of the force found necessary to make an international system of control effective, that is all the world can or should expect. As a matter of fact, if these total wars can be prevented for a reasonable length of time, most of the peoples of the world probably can work out their own economic and political salvation.

Participation of this nation in a system designed to prevent war is inspired and justified primarily by the desire to preserve that integrity and freedom of the individual which is the great distinction of our nation. It is, of course, true that in saving our own freedom, we will inevitably benefit other peoples of the world. But surely we will not refuse to save ourselves simply because in so doing we may help save others.

Sovereignty

Another shrewd, but no less false and emotional, flank attack on the proposal for collective security is the cry that we must never sacrifice our sovereignty. The professional patriots beat their breasts and wave the flag and shout "sovereignty," hoping thereby to frighten us, like sheep, back into the corral of isolationism. In the minds of many the word "sovereignty" has some mystical connotation in some way associated with divinity. In days gone by when men were slaves, their masters imposed their will by an appeal to the divine right of kings. "Your sovereign by appointment from the all highest" was the doctrine. By some peculiar quirk, today in this Republic men talk as if the federal government, even if it is made up of bureaucrats, is a sovereign body, above and apart from the people. Of course, it is not. If sovereignty means anything and resides anywhere, it means control over our own affairs and resides in the people. The people, according to our republican principles, are sovereign. They may delegate all, or any part, of the power to manage their affairs to any agency they please. So far they have delegated part of their power to the city government, part to the county, part to the state, and part to the federal government. We may recall that, under the Articles of Confederation, in 1781, our people delegated certain limited powers to the central government. When those

powers proved inadequate, for the purpose of preserving order and tranquility, further powers were delegated under the Constitution in 1787. Does it make sense to say that in creating the Constitution and establishing order our people sacrificed their sovereignty? On the contrary, they acquired through that delegation the means of preserving order and their individual freedom.

Certainly, it cannot be denied that twice within twenty-five years we have been forced, against our will, into wars which have seriously threatened our free existence. To this extent the supreme control over our affairs, over our destiny, is at present incomplete. Our sovereignty is imperfect. Therefore, if we can remedy this defect, by a delegation of limited power to an agency designed to prevent war, in which we participate fully and equally with others, how can this be called a sacrifice, a giving up, of anything? Rather, I should say, it is the acquisition of something infinitely precious to civilized man.

I realize, of course, that international lawyers and professional diplomats may be shocked by this unorthodox and perhaps rustic conception of sovereignty. I know that the text books, and the authorities, say that a nation must be legally free to determine its relations with other countries to be sovereign and independent. But these academic concepts have lost much of their force in the light of present circumstances. France, Poland, Belgium and Holland, according to the books, were, and still may be, sovereign nations, but I wonder how much comfort that is to the starving citizens of those nations. To argue about, or to insist upon, the preservation of sovereignty in its strict legalistic sense is reminiscent of the medieval treatises of the monks on how many angels can sit upon the point of a *needle*. Bitter experience has shown us that traditional national sovereignty as a foundation for international relations is a death trap. Nations, as well as men, in this modern world of swift transportation and instantaneous communication, are interdependent; their fate is inextricably interwoven whether we like it or not. Until we recognize this basic fact of the modern world, we can make no progress toward the prevention of war, the greatest affliction of our civilization.

In an appeal to prejudice and emotion, the devotees of the status quo attempt to scare us by saying we would be turning over the control of our country to the Communists or, as some would say, to those clever British. This is, of course, rank nonsense. We will have our own representatives who can be relied upon to safeguard our interest. It may have been excusable, during the youth of our country, to assume that these "furriners", as Gene Talmadge might say, would outsmart us. But surely today, having proved our capacity in so many ways, we are not going to insist that we are too stupid to participate with the other civilized peoples of the earth in a common undertaking. It is true, of course, that since this nation has outgrown its swaddling clothes and must now play a man's part in the world, it should find the means to induce its men of wisdom and understanding into its public service. For too long, already, have we looked upon public service as a place for the unscrupulous or the incompetent. The rewards of wealth, power, and especially honor, have been reserved for our successful industrialists, scientists, movie actors and entertainers. How many times have we all heard our best citizens say, "I simply cannot afford to give up my practice, or my business, to run for Congress, or to go to Washington in a department at eight to ten thousand a year?" The plain fact is that we can no longer afford *not* to have our wisest men in, for all of us, the most important business in the world. Not even the Germans, with all their ingenuity in developing ersatz food, clothing and fuel, have been able to find a substitute for brains and judgment. I think it is safe to say that it is *this* shortage that will account for the destruction of that country.

Many of our people, both in and out of Congress, have a natural fear of the unfamiliar. Having had little to do with the other peoples of the world, they cannot believe that most of them, especially those of the United Nations, are quite like us in their instincts, their desires, their hopes and their fears. We have built up, through the years of our isolation from the world, a suspicion and distrust of practically all the peoples of Europe and Asia; and we cannot believe that those peoples want peace and security as much as we do.

It is only natural, therefore, that, before accepting even a simple declaration of policy, such as this Resolution embodies, our people insist upon asking, "Where do we go from here?" They want to know exactly what is to be done, what kind of organization we are to have, how the power is to be distributed, how much it will cost us, what all the risks are. In a few words, they want a blueprint of the whole thing before making any commitment at all.

Upon reflection it is clear that this cannot be done. This is not a unilateral undertaking for us alone to plan. In its essence it is cooperative, and no man or nation alone can say exactly what shall be done. To describe how or where we go after we decide to assume our share of the responsibility for the solution of international problems, should not and cannot be the specification of plans and blueprints. It is rather the description of a course of action, a continuing, day-to-day process of working with other peoples—peoples, it is true, who may differ from us superficially, and who may compete with us for the goods of this earth, but who basically, do not desire war any more than we do. No man can say at this time what can or what cannot be done in *cooperation* with other nations because we have never tried it. On the other hand, we do know, only too well, the cost of non-cooperation.

In the absence of a definite Congressional declaration, it is probably premature and unwise to attempt a further description of where we go from here or of the

process of building a peace. Nevertheless, I shall venture a few suggestions.

The creation of machinery to maintain order should not be burdened with all the difficult, controversial problems arising from this war. In other words, the peace treaty concluding this war should not undertake to provide for the development of cooperative security. The failure of the Versailles treaty is a case in point. We should not permit such questions as the Russian-Polish border, or the fate of Latvia or of Tripoli, to endanger the primary and essential goal, which is the prevention of war in the future by collective action. I think, therefore, that, as soon as we accept the *principle* of participation, immediately we should proceed to participate by direct negotiations with our principal allies in an effort to find a basis and method of permanent united action. As soon as any methods or procedures are tentatively agreed upon, they should then be submitted to the Congress for approval. It is probable that a series of agreements will evolve in the course of the development of a workable system. The scope of these agreements should not be restricted by an inflexible blueprint hastily adopted at the peace table.

Need for Leadership

As a matter of fact, where we go from here depends upon how intelligent we are, and how successful we are in getting wise men to lead us. Our leaders must have vigor and they must have confidence in our power and in the fundamental rightness of our democratic principles. For ten years—yes, for twenty-five years—we have been timid, cautious, compromising and undecided in our attitude toward the rest of the world. We have not stood for anything positively and affirmatively. We have had a negative fearfulness that we might become involved in a struggle in which our very freedom was at stake, and for years we shrank from lending a hand. We can thank the Japs for making the decision for us; otherwise, even yet, we might be hesitating while freedom and the dignity of man were eliminated from this earth.

We must have a policy, and we must have leaders who make decisions according to principles in which we believe and not according to volatile and transitory emotions or nearsighted expediency. It must be built upon a profound evaluation of self-interest, of economics, of physical power, of geographic relations and of fundamental human desires. These matters cannot be blueprinted, but surely men exist who understand their significance.

Such men are the principal contribution we can, and must, make to the future welfare of this nation. Such men, I believe, are to be found in this body of trained lawyers. *You* who understand the evolutionary process of democratic constitutional government, *you* must help this nation assume its proper role in the world and *you* must lend your talents so that this process may be fruitful. You men who understand the art of government and appreciate the psychology of human relations must take the lead in building the peace.

We read much about the danger of Socialism and Communism in this country. But why should we be so frightened? Have we no faith in the inherent merit of our republican, capitalistic system? I think our system can hold its own with any in its ability to bring the greatest good to the greatest number, which is the final justification for any government. But no system is automatic. It can be no better in the long run than the men who direct it. Too often do we criticize it and too seldom are we willing to participate in it. While I have little faith in blueprints, I do have great faith in the ability of our people to rise to great emergencies.

In spite of the numerous objections to participation by this country in a system of mutual security, I believe that our chances of success now are excellent. The very fact that our failure to participate in 1919 has resulted in this present war is in itself reason to hope that we may be wiser this time. Having tried, and found wanting, the policy of isolation during these last twenty-five years, I cannot believe that our people will make the same mistake a second time.

Further I think we may find cause for hope in the long-time history of man's effort to bring order into his turbulent life. The history of government tells us that through the centuries there has been a gradual growth in the size of the unit of government. From the early family and tribal units we have progressed through the various stages of cities, states and nations. Probably the most compelling reason for this development was the desire of the peoples to substitute law and order for the physical strife that so often occurred among these groups. This development has decreased the number of disputes and battles but, on the other hand, has vastly increased the intensity and destruction of the wars. With the tremendous increase in power and mobility resulting from modern science, we have created a force that threatens to destroy us. The art of government has not kept pace with the physical sciences. But the lesson of history is that the unit of government will in time proceed to the international level. The question is: Do we have the intelligence to do it now or must we wait 100 or 500 years to achieve that goal?

In conclusion, I think this war has definitely demonstrated the futility of Maginot lines and defensive armaments, as well as neutrality acts and isolation as methods of discouraging aggression. With modern weapons of warfare, the advantage is always with the aggressor who has the initiative in the first instance. This being true, the only alternative I can think of as a means to physical security is concerted or cooperative action by a dominant group.

In 1919 honorable but misguided men, jealous of their personal prerogatives and distrustful of a new idea, defeated our first opportunity to create order in the world. It is obvious that similar men will oppose our efforts now; not directly, but just as they did in 1919, by indirection and pretense, by reservations and restrictions, but *largely* by an appeal to the emotions and prejudices which all too often overcome our intelligence. Nevertheless, I am confident that we now have a Senate and a House of Representatives of intelligence and understanding, determined to rise above personal or party interests in their consideration of this vital question. In this, our second opportunity, may God grant us wisdom.

PEACE OR POLITICS?

By HONORABLE ROBERT A. TAFT
United States Senator, Ohio

THE declared purpose of the Fulbright Resolution, and of many other similar resolutions proposed in Congress, is to commit Congress to cooperate in creating some permanent international organization to prevent the recurrence of the tragedy of world war. I do not suppose there is anyone in the United States who is not prepared to do anything and everything possible to assure peace for ourselves and for our children and for our grandchildren. The question is whether that purpose is forwarded by having Congress pass resolutions relating to proposals which are not yet before it in any concrete form. One Congress cannot bind any Congress hereafter elected.

Any resolution must at this time be of the most general and indefinite nature. The Fulbright Resolution, for instance, may mean nothing or it may mean everything. It is broad enough to cover, (1) an international world state, (2) a league of sovereign nations, (3) a British-Russian-American Alliance as proposed by Walter Lippmann. About the only policy which it definitely excludes is one which reserves freedom of action to the United States in the future. The policies falling within the Resolution are as inconsistent with each other as each is with freedom of action. Furthermore the emphasis on international machinery with power suggests that whatever this machinery is, it is to be a panacea for peace in our time. Nothing is said about all the other steps which must be taken, and for the most part taken first, if the international machinery with power is to have the slightest chance of success.

A Peace Program More Important Than Resolutions

Important steps must be taken to insure peace by protecting our people against attack or threat of attack. We pursued a policy leading to war because our people were convinced that the German-Japanese aggression would sooner or later lead to an attack on the United States itself. We are not engaged in any crusade for democracy, or for the four freedoms, or the preservation of the British Empire. We seek a world in which the American people can work out the destiny of the Republic, and solve the problems of human liberty and happiness, without physical attack or the destruction of our multiple freedoms by war.

The insurance of peace and safety in the future is not an easy task. It cannot be obtained by passing Congressional resolutions. Since the dawn of history men have been trying to solve the problem. Every peace treaty has stated as its objective perpetual peace between the contracting parties. We had the Pax Romana, the Great Design of Henry of Navarre, the Holy Alliance, the Concert of Europe, the Hague Conventions, the League of Nations of 1919, to mention only a few. It isn't the desire to establish machinery which is lacking. It is a practical plan, which will work, and will not do more harm than good. Whether Congress should yet debate the problem is open to question, but the private citizens of this country should certainly engage continuously in a thoughtful analysis and discussion of the plans that are proposed. How can we in the future insure peace for the United States and its people?

First. We must pursue the war to a complete and overwhelming victory with punishment and disarmament of the Axis nations. That alone should insure peace for many years to come, and it is two-thirds of the problem. There will be no aggressors for years to come who will dare to threaten the world after they see the punishment for aggression which modern war will inflict on Germany, Italy and Japan. The first task of the FBI was to kill or capture the gangsters who defied society. The question of how crime and criminals may be prevented is still engaging the attention of the sociologists.

Second. We must provide army, navy and air forces for our defense sufficiently strong to remove from the

[1]Address delivered at Fifth Session of Assembly, August 26.

mind of any nation the idea that it can successfully attack us. Of course, such a force could not prevent air raids or other attacks, but there is nothing to suggest that modern technology has removed the ability of North America to defend itself against any nation or combination of nations. Look at the successful defense of Great Britain in a much more vulnerable position. It is said that democracies will not keep up their armed forces. But it is no argument against a course of action that one has not the sense or courage to pursue it. International machinery is not going to run itself either, and democracies will find it harder to continue the necessary ungrudging and unqualified support for it than they will to maintain their own forces—a better defense than any international covenants.

Third. After the initial period of relief and reconstruction we must keep out of the internal affairs of other nations, and we must learn to treat with tolerance conditions and ideologies which we may not understand or sympathize with. I seem to see a tendency to make plans for the world as they made plans for us poor Americans. We cannot crusade throughout the world for the four freedoms, or force milk on people who do not like milk without making ourselves thoroughly hated. We cannot force on the Russians freedom of speech and freedom of religion if Mr. Stalin does not approve of them, as he does not. We cannot force independence on India except as the British see fit to arrange it. We can be helpful throughout the world. But we cannot be a meddlesome Matty, or try to boss the boots off the world if we expect to avoid war in the future. No nation should insist on interfering with the internal affairs of other nations unless it is prepared to submit to the same interference itself.

Fourth. The three programs I have outlined are steps of purely national policy. But I do not intend to suggest that they are sufficient. We have sometimes followed them and they have not kept us out of war. Any war today is likely to spread over the world. I believe we should attempt again to prevent the occurrence of any war in the world by international action. Before coming, however, to the question of an elaborate international organization with power to outlaw war in the future there are other direct steps to be taken. In the period after the cessation of hostilities we have a unique opportunity to remove some of the most fertile causes of war. For several years the world will necessarily be dominated by the military forces of Great Britain, Russia and America. The Axis nations and the occupied nations will have to accept in the first instance the basic world-pattern decreed by the Allies. The Versailles treaty failed largely because it wholly neglected economic conditions, and created countries with no visible means of support. The Allies must try to draw boundaries so that no country is forced to remain poverty-stricken. They can insist that customs-unions shall be established in the beginning, even if it is unwise to interfere later with internal tariff arrangements. They can assure a supply of necessary raw materials, and they can make some arrangements to handle the exports which may be necessary to pay for those raw materials. The Atlantic Charter says that the peace should "afford assurance that all the men in all the lands may live out their lives in freedom from . . . want." This seems to me a hopeless and therefore unfortunate aspiration for any peace, if applied to individuals. But freedom from want as an ideal for nations seems possible to assure, and it would reduce one of the most dangerous causes of war. The cause cannot be entirely removed because no matter what arrangements are made for a nation, failure to conduct its own affairs with efficiency or to restrain the growth of population, may cause poverty, hardships, and discontent. How can we possibly provide freedom from want to China's four hundred million, or India's three hundred million, or Japan's seventy million, when there are twice as many people as the country can support on a decent standard of living. We have not even solved the similar problem of little Puerto Rico's two million, with five times the density of population of Cuba, though we have poured out hundreds of millions of American dollars. But in Europe, where wars usually start, a greatly improved economic basis for peace should be possible of accomplishment.

Fifth. The desire for national freedom is one of the deepest of human emotions, and its suppression has been the source of many wars. When not carried to excess, nationalism is the basis of individual freedom and patriotism and other qualities which make life worth living. Therefore in making the peace settlement we must provide for the self-determination of nations, and we must do it with more skill and less theory than was used at Versailles. That is not an easy job under any circumstances, but it can be made particularly difficult in Eastern Europe unless the Russians join sincerely in the effort to avoid future nationalist uprisings in that area. Involved also is some revision of the colonial system to promise more self-government in the future, and to establish some form of autonomous dependent status for countries and islands too small to stand on their own feet.

Sixth. It is generally conceded that democratic governments are less likely to be aggressive than autocracies. In the reconstitution of governments, therefore, in enemy and occupied countries, the Allies should in the first instance insist upon constitutions providing for elections by majority. But there are dictatorships with which we cannot interfere, as in Russia, China, Brazil; and the Atlantic Charter correctly recognizes "the right of all peoples to choose the form of government under which they will live," so that the finest type of democratic constitution may later degenerate into a Fascist or a Communist dictatorship. Yet the victory of the democracies should make democracies more popular, and in the immediate post-war period a boost can be

given them. Any effort to impose democracy on the entire world, however, would be impossible and far more likely to cause war than prevent it.

Seventh. The Allies should provide for the revision of the world code of international law, extending it to provide the rules and ideals which shall govern the relations of sovereign nations in times of crisis and with relation to vital national interests. We are proposing to abolish the German doctrine that "might makes right", and there should be an affirmative statement of the principles on which the nations of the world may live together in peace. It may be extremely difficult, as I shall indicate later, to work out the machinery by which this law or any treaty shall be enforced, but if the law of peace is clear and definite it is much easier to enlist in its support the moral forces of the world. I believe there should be a World Court to interpret the law as recommended by your Bar Association committee and to decide all cases based upon such law which may be submitted to it. Force may be necessary in the background, but it will not succeed unless there exists in the greater part of the world a public opinion educated to peace and to the principles of law on which it is founded.

Too much emphasis is being placed on this question of power and the passage of resolutions which treat our participation in the use of force as the panacea on which all depends. The peace of the American people will depend much more on the skill and good faith by which these seven policies are pursued in the period immediately after the war.

Alternative Plans to Insure Peace

Nevertheless, it is a good time to discuss and distinguish the various plans between which the United States must ultimately choose as a matter of its foreign policy. Mr. Fulbright's plan is apparently intended to rule out isolationism without stating just what he would substitute for it. If by isolationism he means the position of those who believe we should retire to America after the war and take no interest in any association of nations or the actions or trouble of other nations, I do not know anybody who favors it. But there is a respectable body of opinion, perhaps a majority, which believes in all the steps I have suggested, but does not think the United States should commit itself in advance to take any action outside of its territory. They would have us remain free to interfere or not interfere according as we consider the occasion of sufficiently vital interest to this country. This position, and not isolationism, has been the traditional policy of the United States for a hundred and fifty years. While I would myself favor a change in this policy under certain conditions, I doubt if it should be formally excluded from consideration at this time, or until we agree on some other practical policy. The reason I believe a change should be made is the reason stated so eloquently by Mr. Fulbright.

There are three other principal policies which might be adopted under the Fulbright formula of "international machinery with power". They are completely distinct and contradictory. First, we have the Federal Union plan proposed by Henry Streit and former Governor Stassen, calling for the incorporation of this country into an international state. That seems to me the implication of the Ball Resolution proposing an international police force greater than any national force. Second, we have the policy proposed by Walter Lippmann in his book, *U.S. Foreign Policy,* based primarily on a defensive, and perhaps offensive, alliance with the British Empire and if possible with Russia. The former interventionist forces in the East appear to be swinging to this Lippmann Alliance Policy. Third, an association of sovereign nations to include the United Nations and ultimately all others, covenanting together to use their forces to prevent aggression. This seems to me the plan to which Mr. Churchill and Mr. Roosevelt have leaned, in the Atlantic Charter and in their public utterances. The differences between these three policies is greater than the differences between either of them and the traditional American policy of maintaining a free hand.

Federal Union

The theory of an international state bearing the same relation to nations and their citizens as our federal government bears to the states and their citizens appears to me to be fantastic, dangerous and impractical. It is proposed that it have a supreme legislature, executive and court. It would maintain an all-powerful military force able to dominate all nations. It would control all trade, all seaports and all airports within the various nations. Such a state, in my opinion, would fall to pieces in ten years. The whole idea is based on the Union of the thirteen colonies in 1787. But those colonies were made up of men of similar origin, similar methods of thought, similar ideals, with similar forms of government. They lived approximately the same kind of life, with similar standards of living. Even in that case one single difference resulted in a violent civil war seventy-five years later which almost destroyed the Union. Here we would be attempting to unite peoples who do not understand even how their new fellow citizens begin to think; we would join democracies with dictatorships, Moslem states with Christian states, the Brahmin with the Rotarian, men who talk only Japanese with men who talk only English. We would attempt to unite the most highly civilized with the aborigines, the workman who earns $20 a day with the coolie who earns 20c a day. The difficulties of holding together such a Tower of Babel under one direct government would be insuperable.

Furthermore, if it could remain in existence at all,

(Continued on page 647)

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Post-War Planning and the Organized Bar

THIS subject was referred to in a brief editorial in our August issue, by way of comment upon the symposium participated in by some of our members who had manifested special interest in the relationship of the nations of the world after complete victory had been won.

Professional interest in this vital subject is keeping pace with public interest. What was said at our 1943 annual meeting gives convincing proof that lawyers are quite as deeply concerned as men of other occupations in planning to prevent a third global war. A great American debate is in its early stages.

No one can today forecast with certainty the degree to which the United Nations are likely to agree on plans to prevent or postpone the renewal of war.

Our own people are not in unanimous accord as to all the details of a plan to accomplish that result.

Lawyers are as much divided on some of the points at issue as other men in public and private life.

Everyone, however, seems to agree that a third world war would be a calamity which all of us should attempt to avert.

The differences of opinion as to how and by what means such a world calamity should be guarded against were manifested in the addresses delivered at the sessions of our Assembly.

Mr. Justice Rutledge at the fourth session argued for the early consideration and formulation of plans for an international relationship between the Allied Nations, and ultimately between all who proved themselves worthy of the status of nationality, modeled to some extent upon the relationship which our states maintain to the federal government. His thesis was harmonious with former President Hoover's book, and with that of Professor MacIver of Columbia University, and the notable address of his distinguished associate, Mr. Justice Owen J. Roberts, of the Supreme Court of the United States.

At the fifth session of the Assembly Congressman Fulbright and Senator Taft debated the "Fulbright Resolution" which proposes that the United States participate in an international instrumentality "with power adequate to prevent future aggression and to maintain lasting peace." Because of the widespread interest and newspaper comment elicited by this notable debate, we publish the full text of the discussion in this issue.

On a question of such vital importance as this, on which neither the House of Delegates nor the Assembly has yet made any comprehensive declaration of policy, nothing here said should be interpreted as a statement on either side of the many questions on which our members may hold divergent views. Here we mean only to emphasize the importance of an earnest and impartial examination, by individual lawyers and the organized Bar, of the various measures proposed, the purpose of which is to prevent, so far as humanly possible, recurrent world wars, each more terrible than that in which we and our associate and allied nations are now battling for liberty and the preservation of "Equal Justice under Law" for all the nations of the world.

In other columns will be found Judge Parker's study of "World Organization" in which he emphasizes the need of organization for the preservation of fruits of victory and maintaining the peace of the world.

Continued interest on the part of our membership is evidenced by a second symposium on post-war planning.

The Wagner-Murray Bill (S. 1161)

AT the "open forum" session of the Assembly in Chicago in August, Loyd Wright, of California, offered from the floor a resolution which broadly opposed the Wagner-Murray bill (S. 1161) on grounds of "the obvious effort therein contained to establish federal control of the medical profession and the regimentation of doctors and hospitals." The Resolutions Committee reported unanimously to the Assembly, as to the bill, that

> In the absence of careful analysis and complete information, any action upon it at this meeting, either favorable or unfavorable, would, of necessity, be premature and unwise. (October JOURNAL, page 566)

Mr. Wright's resolution was not adopted. The Resolutions Committee recommended that the resolution be referred to the Board of Governors "for its consideration and such action as it may see fit to take." A motion to that effect, amended to include reference to the House of Delegates, was adopted by the Assembly, with the approval of the author of the resolution.

The House of Delegates concurred in the action of the Assembly, and, after some debate in its closing hour, the House adopted a further resolution by Mr. Wright, which asked the Board of Governors to appoint a special committee "to study, analyze and investigate S. Bill 1161," and provided further that "the Board of Governors give publicity to the recommendations and findings of such special committee and the action of the Board of Governors thereon" (October JOURNAL, page 602). The resolution also declared the House to be opposed

> to any legislation, decree, or mandate that subjects the practice of medicine to federal control and regulation beyond that presently imposed under the American system of free enterprise.

The Board of Governors immediately appointed a special committee, which is making a study and analysis of the various parts of the bill. The recommendations and attitude of the Association, as to such parts of the bill as come within the condemnation voted by the House, will be stated and published by the Board of Governors, as the resolution directed, when the special committee makes its report.

Meanwhile, it would be premature for anyone to assume and assert that the American Bar Association has declared opposition to all parts of this comprehensive bill, or that the Association is opposed to all remedial steps to increase the availability of competent medical and hospital service to the less fortunate of our population. Questions of agency and method are for consideration. The concern of the Association is only with the public interest in the independence of professional work and the avoidance of centralized control by government, in domains in which the free initiative of individuals and the dauntless spirit of private enterprise have accomplished more for human welfare, happiness and public health in this country than have been accomplished under any system anywhere else in the world.

When the Board of Governors takes action and publishes the recommendations which result from careful study, the attitude of the Association as to the various parts of S. 1161 will be clearly and authoritatively stated, with the reasons.

The Board of Legal Examiners

AS is pointed out in another column the existence of the Federal Board of Legal Examiners is imperilled. If the bill which would give it express statutory authority fails of passage in the Senate it will go out of existence.

Such a result would be a backward step for civil service reform. All, the Civil Service Commission included, agree that the Board has done an excellent job. It has inaugurated a merit system, improved the calibre of government lawyers and caused appointments to be more widely and equitably distributed among the states and law schools.

One objection made to the Board is that all civil service positions should be controlled by the Civil Service Commission whose members must be confirmed by the Senate and not by an independent body. The weight of the theoretical logic of this argument is overborne by the fact that lawyers are better qualified to pass upon the fitness of other lawyers than are laymen, as has been demonstrated by the success of the work of the Board.

Moreover, the Attorney General has indicated that it would be satisfactory for the pending bill to be amended so as to provide that the Board should act with the approval of the Civil Service Commission. While it would be better for the Board to be independent, such an amendment would probably have little practical effect, for the Commission, because of its confidence in the Board, would no doubt permit it in most cases to act as an autonomous body.

The other objection grows out of the difficult question posed by the statutory preference accorded veterans. Some of the veteran organizations insist that the formula for the recognition of this preference should be worked out by the Commission. The acceptance of this view need not militate against the existence of the Board. The bill can be amended so as to provide that the Commission shall prescribe rules dealing with this preference and that the Board shall follow these rules. If the Board ceases to exist lawyers will continue to be within the civil service. Their selection will then be controlled by the Commission and not by the Board and the problem of veterans' preference will remain.

It has been suggested that if the bill fails of passage the members of the Board could continue to act as an advisory committee to the Commission and thus the work go on. The answer to this is that the failure of Congress to adopt the bill would be construed as a repudiation of the Board's work and would handicap a continuance of that work under other auspices. A merely advisory Board, moreover, would not hold the interest of its members in the same way as one charged with administrative responsibility.

The Army Tells What Lawyers Have Helped to Do

THIS issue contains the address delivered before the Assembly of the American Bar Association on August 24 by Major General Cramer, The Judge Advocate General of the United States Army. General Cramer came to Chicago to tell at first hand of the work which lawyers have been doing, under the leadership of the American Bar Association, in cooperation with the Army,

as also with the Navy and other branches of the armed forces.

As the chief law officer of the Army, General Cramer could more competently describe and appraise this service than could any officer of the Association engaged in it. At the same time it should be kept in mind that the "legal assistance" work, vital as General Cramer shows it to be for the morale of the armed forces, is but one of the many phases of the war work initiated and carried forward by the Association.

Nearly four thousand of the younger members of the Association are serving their country in uniform, many of them in the stress of battle in distant lands. Probably several thousand lawyers who are not members of the Association are making similar sacrifices, along with other citizens, in the common cause. General Cramer's message makes it clear that many tasks essential to the Nation's war effort are being capably performed by lawyers from whom age and physical condition withhold the privilege of serving in the armed forces. For any lawyer who feels a sense of disappointment that he can have no rank or part in winning the war and preparing for the peace, General Cramer shows that there is much for lawyers at home to do, and that many of them are doing it.

Conciseness and Brevity in Reports

AT the sessions of Section chairmen in Chicago on October 23, the need for brevity and clearness, in the reports and recommendations of the Sections, was emphasized by recommendations from the Association's Emergency Committee on Printing and Printing Costs. The need for saving money and paper, in Association printing, was the occasion for bringing the matter to attention. Actually the suggestion was based also on a belief that the attractiveness and effectiveness of the reports and recommendations of Sections and Committees would be enhanced if they were kept within moderate length and were not added to by avoidable appendices.

It is well known that the bulk of the Association's Annual Report Volumes is due largely to the length of reports and appendices. For record purposes, the reports as rendered and acted on have to be printed. Some members who read the narratives of the proceedings of the Assembly and House of Delegates at the 1943 Annual Meeting, in the October issue of the JOURNAL, have commented upon the prolixity as well as complexity of some of the recommendations submitted for action. The inclusion of these in full, for necessary purposes of having a record presently available, required a considerable expansion of the space devoted to those proceedings. Sections and Committees are therefore asked to make their reports and state their recommendations in as brief and clear a form as is practicable.

In that always interesting connection, the recent report of the Baruch Committee on manpower has been widely commended as a model, "for directness, vigor and clarity." The editor of "Topics of the Times," in the New York *Times*, declared that "on its form the Baruch report would have received 100 per cent from all lovers of good English." A contrast was suggested, with the Form 1040-E S style and with the instructions and explanations for the income tax forms. Fifty-four words were sufficient for Congressman Fulbright and the House of Representatives for a ringing declaration of national policy for post-war collaboration to enforce peace. A similar number was sufficient for the Senate Committee's substitute declaration on this vital and far-reaching subject.

A typical paragraph in the Baruch report proposed a "labor budget" for the Pacific Coast to balance war production and labor supply:

> This labor budget would have two sides to it, as with all budgets. On the one side, employers would draw upon the budget on the basis of priorities, with the War Manpower Commission regulating the flow of labor. On the other side, the War Production Board and other procurement agencies would be responsible for keeping production demands in balance with labor supply. No new contracts would be let in the area unless other production demands were reduced so as to keep the budget in balance.

The editor of "Topics of the Times" referred whimsically to the "horror" of official draftsmen for short words and short sentences, for saying "No new contracts would be let," when a person can just as well say, "No contractual obligations shall be negotiated, entered into, incurred and implemented." He suggests that "rewritten under proper Treasury 1040-E S literary influences," the Baruch proposal for a labor budget would have emerged about as follows: "No contractual obligation shall be negotiated, incurred, entered into and implemented in any area antecedent to a corresponding reduction in pre-existing production schedules effectuated for the preservation of a budgetary equilibrium established through the canalization by the War Manpower Commission of a sustained labor flow between employment pool and management on the basis of priorities parallel with a counterbalancing exercise of regulatory authority over new production programs by the War Production Board and other procurement agencies in harmony with available labor resources, whichever is the greater."

Other parallels could be drawn, but this commentary has already come close to disregarding its own admonition for brevity.

POST-WAR PLANNING AND THE ORGANIZED BAR

THE most effective means of preventing a succession of wars and insuring an enduring peace are yet to be evolved as a result of enlightened effort toward those ends. The process of evolution should be placed in motion by establishing an association of nations, united together for the purpose of preventing wars and equipped with the force necessary to enforce peace. Because of limited precedent and meagre previous experience, perfection cannot be expected in the beginning. However, this association of nations will provide the framework, along the outlines of which the evolution of a workable means of preserving peace in the world will take place. Its future growth may not be fully foreseen, but in the first instance it must comply with certain fundamental conditions.

For the present at least it must have only one purpose and must arrogate to itself only one prerogative—that is the preservation of peace and the prevention of war. In the course of its development, many activities may be proved germane to the main purpose. However, for the present, all projects to change the habits, diets or traffic laws of other nations to conform to our own must be left to the missionaries and welfare workers.

The association must assume world-wide jurisdiction and exclusive authority in the field of preserving peace and preventing war. All alliances for military cooperation must be outlawed to prevent the recurrence of the evil of power politics.

The association must be prepared to enforce peace, prevent war and back up its exclusive jurisdiction in this field by force. The time may come when little or no force will be needed, but we have learned from bitter experience during the past quarter of a century that at least in this generation and possibly for many generations to come, world peace can be assured only by maintaining a military and naval power strong enough to deter aggressors and potent enough to stop wars of aggression before they get out of hand.

The association of nations must bring about a revival of International Law and cause it to be revised to fit the needs of a world organization to enforce peace, including provisions for administration of the law by a world tribunal.

Last and most important, the United States must participate in the formation of such an association and must become an active and influential member thereof. Any such venture without the participation of this country would be doomed to failure.

LYNN U. STAMBAUGH

Fargo, North Dakota

REIGNS of terror which are periodically imposed upon the world by the advocates of force must be eliminated in favor of a universal reign of law, first imposed, and then supported, by those who believe in the rule of reason and liberty under law. We must set up an order under which every nation, no matter how small or weak, may dare to assert its just rights against any other, no matter how great and strong; and provide a forum for the settlement of international disputes, and a means of enforcing the decisions of the

There are, or were, seventy-two, maybe more, political entities holding themselves out as independent nations at the beginning of World War II. By "beginning" I mean the invasion of China by Japan and of Ethiopia by Italy. Those states ranged in size from Russia's eight million square miles and China's four hundred and sixty million people down to such minutiae as Monaco and Liechtenstein. Their problems vary as widely as their area and population. Each must have the right to seek the solution of its problems in its own way, provided that way does not infringe upon the equal right of the others to do the same.

In their internal relationships, whether the people of a nation choose to be ruled by prince or potentate, president or commissar, should be of no particular concern to us, provided they have a constitutional government which maintains law and order at home and observes the obligations of international law abroad.

Instead of attempting to form a super-state having sovereign powers, it would seem reasonable to build on experience, admit our mistake in refusing to join the League of Nations, and accept our full share of responsibility for the future by joining with all nations peacefully disposed, to make doubly sure not only this time but in the future that all outlaw governments that live by the sword shall perish by the sword.

The renunciation of war as an instrument of national policy must be more than a paper pledge. Those who violate it this time and in the future, both individuals and nations, must be adequately punished, in order that others similarly tempted in the time to come may understand that the consequences to them will not be gain and glory but suffering and disaster.

When the military victory has been won, order established, criminals punished, and the powers of government slowly relinquished to men of good will who believe in reason and collaboration, the problems yet remaining will tax the powers of all. Let there be no retreats to normalcy and isolation this time. Patient and helpful collaboration must be our role for the future.

DAVID A. SIMMONS

HOUSTON, TEXAS

WHEN the last gun has been fired and the last bomb dropped, the post-war period begins. There will always be two fronts. Obviously much unselfish thinking and planning will be necessary on both. We may commit one to some international authority; the other must be left to the combined wisdom of our citizens.

Successful planning for the future of one or more nations depends upon definite purpose and willingness to make some sacrifice. To subscribe to such a program, people must understand and believe in the thing sought to be accomplished. The organized Bar can serve the public in this respect by making clear, not only our peace aims, but also proposed international machinery for maintaining world peace.

Any international program, when finally worked out, must represent the thinking and have the support of the informed citizens of the collaborating nations. This is especially true of the people of our country.

We could hardly approve any international body with jurisdiction over our internal affairs. Careful watch must be kept that there shall be created no tribunal with power, either legislative or judicial, to meddle in any way with our domestic planning. The apparent restiveness under the possibility of increased domination by the federal government shows that international meddling would not be tolerated.

There are two probable dangers at the present time. One is that ex parte planning for world peace may become so explicitly detailed in advance of the time for a peace conference that it may interfere with peace negotiations with our allies. Here, again, the Bar may render a service to our people by frank discussion of principles, leaving details to a more opportune time.

Another danger is, that the people of the warring countries, and especially our own, due to their great emotional desire for ending the war, will be willing to subscribe to something that may eventually contribute to another war or the loss of the liberties and freedoms for which we believe we are fighting.

In planning for our internal welfare we will be required to approach the problems with positive purpose on the part of every person and organization, and be willing to make some sacrifice of individual opinions and prejudices and also of profits and concentrated power, in an effort to unite in support of a sound economy of individual enterprise, with the fewest possible number of people depending on the government for help.

ALBERT FAULCONER

Arkansas City, Kansas

AMERICANS in positions of authority should confine their declarations of aims and purposes well within the realm of practicability and realism, and practice the virtue of clarity. The repercussions of such declarations are felt and considered of great significance throughout the world. Misinterpretations of our attitudes should be avoided.

Self-preservation is the first law of every individual, of every tribe and of every nation. Nationalism will abundantly live. The first duty of our country is to protect itself, and to secure the rights and benefits of a society and government of its own choosing.

Therefore it would be well if we would observe the following as guides to action in the international field:

(1) There should be no doubt created that the people of the United States will be given an opportunity to express their approval or disapproval of any proposed supergovernment.

(2) It should be made clear that our country does not propose to surrender its right to maintain a military force adequate to defend its sovereignty, its national integrity, and its right to self-determination.

(3) We should refrain from creating the impression among other peoples that the United States intends to dictate to them what their forms of government and society shall be.

Such an objective would not only be impossible of attainment, but would cause disturbing resentment to domination.

(4) We should avoid nebulous, ambiguous, and misleading statements as to our intended participation in any type of governmental machinery.

At no time should words be capable of stealthy interpretation. All talk about government is vain unless the powers thereof and the manner of their exercise are carefully delineated.

The preamble to our federal Constitution, to which all the Fathers agreed, was not intended even to out line the framework or powers of a government.

Suppose any given number of nations should adopt the following preamble as a declaration of intentions:

> We, the nations of the earth, in order to form a more perfect union, establish justice, insure global tranquillity, provide for the common defense, and secure the blessings of liberty, do ordain and establish the following constitution.

What then? The real task of saying what is meant and what is to be done begins. It is impossible now to delineate the powers of a supergovernment. Certainly we ought not to propose preambles to the world from which, according to the motives of the interpreter, it may be said we have committed ourselves to this, that, or the other course. Certainly we will not commit ourselves as a party to the establishment of any sort of an international government or machinery, just for the sake of peace.

There is every reason why the emission of words should not precede a careful molding of our real intentions.

CHAS. W. BRIGGS

St. Paul, Minnesota

Peace or Politics?

(Continued from page 641)

it would not remain democratic—if a state including dictatorships like Russia, China, Brazil and Greece could ever have been democratic. True democracy depends on local self-government, effective access of the people to their central government, and the protection of inalienable individual rights. Sometimes I question whether the United States has not reached the limit of size under which the people of a nation can have a real voice in its government. Certainly a world government at Geneva or Panama would listen more closely to the voice of cranks and pressure groups than to the voice of rural Illinois, for instance. It is significant that the British Empire because of its size has moved toward decentralization of government, and has today no over-all legislative body, no over-all executive, and no over-all police force. If Canada and Australia and New Zealand and South Africa and Eire are regarded as too diverse to be consolidated into one government, what about China, Japan, Russia and Ethiopia?

Third, I do not believe our Allies, England and Russia, would agree for a moment to submit themselves to an international state and have their seaports and airports run by an international bureaucrat. Remember that this would involve scrapping all armament for an international police force, controlled by some international executive selected by a body the control of which would rest in a combination of member nations impossible to predict. If you can see Winston Churchill liquidating the British fleet, or Joe Stalin dismissing the Russian Army, or either of them turning over their forces to President Whoozis of Worlditania, you are more clairvoyant than I.

Finally, anyone who suggests such a plan is proposing to tear up the American Constitution, which has made this nation the greatest power in the world and set an example of successful popular rule to the entire world. We are asked to scrap a tried plan which up to this time has successfully maintained our liberty and afforded to this country the protection against invasion and interference which is the alleged purpose of all these international plans. It does not seem to me consistent with American patriotism, and most of our people are still patriots. If Congress is going to pass any resolution, at all, it certainly should exclude the possibility of an international supergovernment. I may say that the resolution of Senators Vandenberg and White does exactly that by emphasizing the fact that any proposed international arrangement shall be made between sovereign nations.

British-Russian-American Super-Alliance

A plan completely antagonistic to the Stassen plan is proposed by Walter Lippmann in his recent book, *U.S. Foreign Policy, Shield of the Republic.* He urges that we form an alliance with England, Russia, and perhaps China. Presumably this will bind the parties to go to the defense of each other if either is attacked and perhaps to join in certain offensive action. The alliance is to be so strong that we cannot be successfully attacked. It is an extension of the proposition advanced by me earlier that we should have an adequate army, navy, and air force for our own defense, as one of the means of discouraging and preventing an attack, but it is maintained that no such force can be adequate for that purpose without an alliance at least with England. This position seems to overlook the fact that alliances have their own weaknesses, and are as likely to fall apart at crucial moments as any defensive plan based on a nation's own armed forces.

The book is brilliantly written and it will have a profound effect on American public opinion. It will obtain much support because undoubtedly during a few years after the war Europe will be dominated by the British, American and Russian armies, and perhaps by some formal trusteeship by those nations during the period of reconstruction. It is often easier to continue such existing powers than to surrender them. The idea may appeal also to the nationalistic sentiment of those Americans who picture America dominating the alliance and the world. It proceeds on the assumption that wars cannot be prevented by the education of the human race to a rule of law and order or by any international arrangement, but only by the armed forces of America, England and Russia.

Fundamentally this is imperialism. It derides the idea that we can defend the United States, or America, without sea bases and air bases in Europe, Africa and Asia. It is said that we cannot be safe unless our forces are equal to the job of meeting all our commitments, that is of defending America, Greenland, Iceland, Alaska, the Philippines and perhaps Australia and England against any possible combination. For that purpose we must control all the sea lanes and all the air lanes over the Atlantic and the Pacific. Obviously if this is sound policy for us, it is sound policy for every other nation. England must control all the oceans. Holland must control the routes to the Indies. Russia must have bases on all sides of the Baltic and control the North Pacific since Bering Strait cannot be reached except by sea or air.

If we must have bases in Africa to defend South America why doesn't France or any other African power have to have bases in South America to defend Africa from us? Since many nations are dependent on imported food for their very existence, they must each dominate the sea lanes over which that food must travel. The theory can only lead to vast national armaments in all parts of the world; every nation or at any rate every alliance of nations must be able to control the seas, which means control the world. It has long been recog-

nized that militarism, the very existence of huge armaments potentially aggressive is a cause of war. They are a tinderbox which any spark may ignite. Those who control them unconsciously desire to see them in action.

Mr. Lippmann bases his plea for an English defensive alliance on the claim that from 1823 to 1900 we depended on an understanding with England which gave us the British fleet to enforce the Monroe Doctrine, and that from 1900 to 1940 our foreign policy was bankrupt because our army and navy were not large enough to enforce the Monroe Doctrine and defend the Philippines. As for the earlier period there was a long succession of eminent American Secretaries of State from John Quincy Adams to Seward and Olney and Hay who certainly would be very much surprised to learn that there was any alliance of any kind with England, express or implied, to enforce the Monroe Doctrine. It was always doubtful whether a little nation like the United States could enforce that policy. But we could make a lot of trouble for anyone who violated it.

As for the period after 1900 our foreign policy was undoubtedly based on a mistaken assumption that one nation would not wantonly attack another. But we had a navy from 1900 to 1914 adequate to defend ourselves against any nation except England whose peaceful intentions we assumed.

It was only after the expiration of the naval treaties that our foreign policy became bankrupt. Then we permitted Japan to increase its navy while we neglected to modernize our own sufficiently. Then we failed like France and England to keep up with the procession in military aviation, and let Hitler assume control of the air. But Hitler only came into power in 1932, and before that airplanes were forbidden to Germany and its army limited to 100,000 men. If we had developed a sufficient land-based air force it seems now that we could even have defended the Philippines.

Nor was there anything isolationist about our foreign policy in the '20s after the first refusal to join the League of Nations. The disarmament treaties, the Eight Power Pact in the Pacific, the Kellogg treaties were all efforts to work with other nations. We were willing to go further than the British in the imposition of sanctions against Japan and Italy. In the Dawes and Young plans we attempted to help in solving the economic trouble brought on Europe by the Versailles treaty. One of President Hoover's last acts was to secure the postponement of reparations and the freezing of the German short-term credits. Our foreign policy was never bankrupt. In his eagerness to support a preconceived thesis, Mr. Lippmann seems to me to have distorted historical fact.

The policy which he advocates would have promoted war in the past and would promote war in the future. I have pointed out how it would promote militarism, one of the causes of war. But it has other dangerous results. A military alliance presupposes an enemy threatening war. A military alliance is always an alliance against someone.

A defensive military alliance based on a control of all the sea lanes and air lanes of the world is bound to produce imperialism. Our fingers will be in every pie. Our military forces will work with our commercial forces to obtain as much of world trade as we can lay our hands on. We will occupy all the strong strategic points in the world and try to maintain a force so preponderant that none shall dare attack us. Potential power over other nations, however benevolent its purpose, leads inevitably to imperialism.

Any policy based primarily on alliances is an abandonment of the ideals on which the American Republic is founded. It substitutes force for a rule of law in the making of which law all those participate who are to be governed. It establishes government without the consent of the governed. It is of course inconsistent with the Atlantic Charter formally approved by thirty-two United Nations. The first clause of that document says "The countries seek no aggrandizement, territorial or other." Yet here certainly is a substantial aggrandizement of power plus the seizure of any bases which may be thought necessary. The desire to secure the alliance with Russia has led Mr. Lippmann to sacrifice the third clause of the Atlantic Charter promising the restoration of self-government to those nations who have been forcibly deprived of it, for he assumes that Russia will take over the Baltic states, and in his eagerness for the Russian alliance he seems prepared to go a long way in conceding Russian domination over Poland and all the other border states. He is proposing to substitute for the appeasement of Germany, any appeasement of Russia necessary to secure an alliance. He proposes to substitute for American isolationism, the isolationism of Britain, America, Russia and perhaps China from the rest of the world.

Finally, my own opinion is that we are not fitted to a rôle of imperialism and would fail in any attempt at world domination. We do not have the interest or the temperament to make a success. We are so strongly democratic that we do not approve of ruthlessness even when necessary for success. We permit our colonial problems to be determined by domestic policies. We do not really want to boss other peoples, and so we do not do it well. If we did succeed in becoming imperialists abroad it would be likely to change our whole attitude at home. We are in enough danger from totalitarianism now, without abandoning the ideal of a rule of democratic law in foreign relations.

There may be some question whether the Fulbright Resolution covers the Lippmann plan, but on the whole

I believe it does. A British-American-Russian alliance is probably international machinery, and it certainly has the power. I should prefer a resolution not sufficiently broad to cover this plan of imperialism.

Organizations of Sovereign Nations

The plan for an enforced peace which accords most closely with the ideals of the American Republic, and of the Atlantic Charter, is that for an Association of Nations to include the United Nations and the Neutrals and, after a period of probation, the Axis nations. It would be supported by covenants between sovereign nations agreeing to determine their disputes by the law of nations and judicial decision or by arbitration. It would further be supported by covenants to join in the use of force against any nation determined to be an aggressor by the decision of some international tribunal. Frankly this is an obligation which the American people may be loath to undertake, but I believe they will undertake it, because they know that if war is not prevented at the start under modern conditions, it is more than likely to spread throughout the world. Certainly this plan is to be preferred to an international state or a British-American-Russian offensive-defensive alliance.

But there are certainly conditions to be insisted on. First, force should not be called for against any nation because of any internal domestic policy, except rearmament in excess of a quota imposed or agreed to. Interference in domestic policies, even such vital matters as tariffs or the treatment of minorities, would be more likely to make war than prevent it. The test is: Is the subject one on which the people of the United States would be willing to have other nations interfere with our internal action? If not, we should not attempt to impose such interference on others. Second, the covenant must be preceded by an economic arrangement fair to all nations, and by political arrangements providing for proper self-determination. The covenant, of course, must provide for the revision of boundaries and obligations, but essentially we will be asked to guarantee the status quo. We cannot make that guarantee unless the status quo is fair to all peoples and gives them a chance to live, and therefore affords a reasonable hope that peace can be maintained. Third, I believe that any obligation to use force in Europe should only be secondary, not to be effective until the peace-loving nations of Europe have exhausted their own resources. This is in accord with Mr. Churchill's suggestion of a Council of Europe under the Association of Nations. We cannot help solve the problems of Europe unless the great majority of the European nations first agree on what that solution should be.

I quite agree that it may be impossible to work out an Association of Nations, but that is no reason for not trying. Russia may insist on conditions in Eastern Europe or in Eastern Asia in conflict with our insistence on self-determination of peoples, but I hope not. England may insist on an empire which our people do not care to support, but I do not think so. The question of relative representation in tribunals to pass on questions involving the use of force is always difficult to adjust. But if Mr. Fulbright's Resolution were confined to machinery of the character I have described I should be glad to support it.

Conclusion

I do not believe that the time has come to consider what our alternative course should be if the effort to establish an association of nations based on law and orderly justice, with enforcement provisions, should fail. Let us not assume that it will fail. But if it failed we would then be confronted with a choice between the Lippmann plan of a defensive alliance with England and Russia designed to dominate the world, or an independent policy with no obligations assumed in advance. I do not hesitate to say that I should prefer the continuation of our traditional policy, with the hope that the time might soon come when an international agreement might be reached.

In the meantime we could proceed with the seven points I first suggested including provision for our own defense, and actively interest ourselves in assisting those nations who desire our help to become self-supporting economically. We could judge of the seriousness of any crisis which may arise in the world and weigh the need for interference by our armed forces. England and ourselves could assume that neither would attack the other, and be free to cooperate in any emergency. That policy has not brought upon us either catastrophe or invasion in the past and is not likely to do so in the future.

I have tried to suggest the infinite complications which we face in foreign policy, and the great difference of principles involved in the alternatives presented. I have tried to indicate that we show a complete lack of grasp of the fundamentals of peace policy, if we debate only the question of force.

I suggest that instead of passing vague resolutions about machinery with force we ought to discuss the basic principles by which we can hope to assure a peace in the world, which will enable America to work out her destiny at home. The time has not come when the President, or Congress, or the people can make a final decision, because we do not know the conditions which will exist at the end of the war. Until that time comes I do not believe we should, if we could, tie our hands against the adoption of any policy which the American people after due consideration may then desire to adopt.

JOHN A. RAWLINS

COUNTRY LAWYER AND GRANT'S LIEUTENANT

By GEORGE R. FARNUM
of Boston
Former Assistant Attorney General
of the United States

He is a fine example of what an enthusiastic, ardent lawyer may become when war calls out the young and patriotic.
—William Tecumseh Sherman

ON APRIL 15, 1861, the news reached the town of Galena in Jo Daviess County, Illinois, that Fort Sumter had fallen. The following day all business was suspended and the townspeople, and those who flocked in from the surrounding countryside, gave themselves up to an unrestrained expression of their inflamed emotions. The demonstration was climaxed in the evening by a mass meeting packed by citizens of every shade of political opinion.

After listening to speeches by the mayor and the congressman from the district, the people proceeded to take a hand in the program and began to clamor for "Rawlins—Rawlins." In response to this insistent call, a young man of about thirty elbowed his way from the rear through the seething jam to the platform. As he faced his audience a hush, electric with expectancy, fell upon the throng.

He was a man who had sprung from the plain people, having been raised in a large family for whom existence had entailed a bitter and disheartening struggle. He had been bred in the hard and toughening ways of life on a rude farm, where the principal source of subsistence was cutting wood, burning it into charcoal, and hauling it to nearby lead mines. His schooling had been intermittent, due to insistent demands for chores on the farm and the exigencies of work at the charcoal pits. But he made the most of what circumstances offered. The best qualities in the blood of his Scotch-Irish ancestors flowed in his veins, and the toil and privations of his youth had served to forge a character and form a mind which were to serve him well—and his country too—in the tumultuous and fateful days ahead.

In the long night watches at the charcoal pits he pondered ways of escape from the dreariness and penury of his life. At the age of twenty-three he took the decisive step, abandoned charcoal burning, and turned to the law. He tackled his legal studies with such assiduity that in the space of a year he had qualified himself for admittance to the Bar—and had been taken into partnership with his preceptor in the bargain. His progress in his profession had been rapid and he had quickly gained a considerable local reputation, particularly as a jury advocate. In 1857 he had been elected city attorney.

In 1860 he had been nominated for presidential elector on the Douglas ticket and had engaged with the Republican candidate in a series of joint debates in which he had displayed conspicuous powers as a speaker and gained considerable political prestige throughout the district.

Such was the man who answered the summons to address his fellow townsmen that April night. For almost an hour he spoke with all the passion and force of his strong and vehement nature, sweeping his audience along with the impetuous and irresistible rush of his argument to the great climax, "I have been a Democrat all my life, but this is no longer a question of politics. It is simply union or disunion, country or no country. I have favored every honorable compromise, but the day for compromise is past. Only one course is left for us. We will stand by the flag of our country and appeal to the God of Battles!"

Among Lawyer Rawlins' listeners that night was a simple, modest and uncommunicative man of about forty years of age. He had recently come to Galena, where he was employed as clerk in his brother's leather store. Little was known about him except that he was a graduate of West Point, had participated in the Mexican War, had served for a time thereafter on the Indian frontier, and then had resigned his commission. His name was Ulysses S. Grant. Within a few months an association was to be formed between these two remarkable but dissimilar men which was destined to be not only unique in American history but of incalculable benefit to the country. On the way home from the meeting, and with Rawlins' words ringing in his ears, Grant declared to his brother that he felt he should reenter the service. Within the next few days he made good his word.

One of his first acts as brigadier general was to tender Rawlins the appointment of adjutant, though the latter had no military experience of any sort and knew literally nothing of military affairs. Whatever may have been the reasons which moved Grant to offer this key position on his staff to a young country lawyer with no apparent qualifications, it proved in the sequel to be a stroke of genius. From the day of his appointment until the war was over,

This is the twelfth in a series of biographical studies of eminent soldier-lawyers written by Mr. Farnum for the JOURNAL.

Rawlins was rarely absent from his chief's side. He served him throughout with tireless industry, unrelaxing vigilance, undivided loyalty, high intelligence, and great courage—and, be it added, with rare self-effacement. Through that devotion there breathed his passionate love of country, his high sense of public duty, his deep attachment to American institutions, and his ungrudging support of the great cause for which they were fighting.

He made himself master of the complicated routine of his own particular office. He became the sagacious mentor in matters of personnel. He saw to it that when work was assigned it was promptly and efficiently performed. Of the feelings which inspired him, he gave testimony in an early letter to Congressman Washburn. "None can feel a greater interest in General Grant than I do," he wrote. "I regard his interest as my interest, all that concerns his reputation concerns me; I love him as a father; I respect him because I have studied him well, and the more I know him the more I respect and love him."

No sooner had Grant begun to win victories than the rumor-mongers—whether inspired by envy at his achievements or by resentment at his interference with their profiteering—began to sow suspicion about his sobriety. The circumstances of his previous retirement from the Army were recalled to lend color to the damaging allegations. In March 1862 General Halleck telegraphed McClellan, then General-in-Chief at Washington, "A rumor has just reached me that since the taking of Fort Donelson, General Grant has resumed his former habits." This effort to discredit Grant caused Rawlins, who himself was a strict teetotaler, the most acute anxiety and led to his assumption of the role of keeper of Grant's conscience. Shortly after the receipt of Halleck's telegram the War Department sent to Grant's headquarters a confidential observer in the person of Charles A. Dana. Long afterwards Dana had this to say of Grant's Fidus Achates, "Rawlins was one of the most valuable men in the army, in my judgment. . . . He bossed everything at Grant's headquarters. He had very little respect for persons and a rough style of conversation. I have heard him curse at Grant when, according to his judgment, the General was doing something that he thought he had better not do. But he was entirely devoted to his duty, with the clearest judgment, and perfectly fearless. Without him Grant would not have been the same man. Rawlins was essentially a good man, though he was one of the most profane men I ever knew; there was no guile in him—he was as upright and as genuine a character as I ever came across."

During operations around Vicksburg, Grant fell from grace during an excursion on the Yazoo River. Rawlins, immediately upon hearing of this lapse, called his chief to account in a letter which is one of the unique documents of its kind in American history. He wrote:

"The great solicitude I feel for the safety of this army leads me to mention, what I had hoped never again to do, the subject of your drinking. This may surprise you, for I may be, and trust I am, doing you an injustice by unfounded suspicion, but if in error, it had better be on the side of the country's safety than in fear of offending a friend. . . .

"You have the full control of your appetite, and can let drinking alone. Had you not pledged me the sincerity of your honor early last March, that you would drink no more during the war, and kept that pledge during your recent campaign, you would not today have stood first in the world's history as a successful military leader. Your only salvation depends upon your strict adherence to that pledge. You cannot succeed in any other way.

"As I have before stated, I may be wrong in my suspicion, but if one sees that which leads him to suppose a sentinel is falling asleep on his post, it is his duty to arouse him; and if one sees that which leads him to fear the General commanding a great army is being seduced to that step which he knows will bring disgrace upon that General and defeat upon his command, if he fails to sound the proper note of warning, the friends, wives and children of those brave men whose lives he permits to remain thus in peril, will accuse him while he lives, and stand swift witnesses of wrath against him in the day when all shall be tried.

"If my suspicions are unfounded, let my friendship for you and my zeal for my country be my excuse for this letter; and if they are correctly founded, and you determine not to heed the admonitions and prayers of this hasty note, by immediately ceasing to touch a single drop of any kind of liquor, no matter by whom asked or under what circumstances, let my immediate relief from duty in this department be the result."

The spirit with which Grant accepted this extraordinary rebuke eloquently reflected the humility and self-possession which were no small elements in his greatness.

As Grant developed in the art of war Rawlins grew with him. As early as the summer of 1862 Grant wrote the War Department, "I can safely say that he would make a good corps commander." Irreplaceable in the vital roles he was playing on the staff and in the daily life of his chief, he never seriously aspired to command troops in the field. Promotions came periodically however. He had joined Grant with the rank of captain; on April 9, 1865, the day Lee gave up the fight, he was appointed major general.

In March 1869 he resigned from the Army to become Secretary of War in Grant's Cabinet. He was then but thirty-eight. The ravages of the disease contracted by the hardship and exposure of years of hard campaigning now began to take an ominous turn. Of his record as a Cabinet member during the six months still allotted him, one in-

(Continued on page 675)

NOTES ON PRACTICE UNDER THE RENEGOTIATION ACT

By MAJOR W. HOWARD DILKS, JR., J.A.G.D.
Chief, Assignment Branch
War Department Price Adjustment Board

THE Price Adjustment Boards have sought to maintain flexibility in the matter of procedure. The circumstances of the cases coming before them are almost infinitely varied; it is desired that each be handled in such way as will result in a minimum of inconvenience consistent with adequate disclosure and consideration of the facts involved. Even though there be little in the way of formalized procedure under the Act, certain general methods of operation have, through experience, been found advantageous for use in the majority of cases. It is desirable that these methods of approach be more generally understood by contractors' representatives.

How Contractors Are Brought into Renegotiation

Many concerns, desiring to receive prompt determination and clearance of their responsibilities under the Act, request the Price Adjustment Boards to institute renegotiation proceedings. Such requests are not deemed to involve any admission of liability; it is the policy of the Boards that they receive prompt attention.

Subsection (c) (5) of the Act provides for the voluntary filing by contractors of financial statements in the form prescribed by the joint regulations thereunder.[1] Since, under the Act and joint regulations, such filings do not require action on the part of the Boards until one year after the filing is effected, few contractors have regarded this procedure as advantageous. In practice, no action is taken on such cases by the Boards unless it appears from the data filed or otherwise that excessive profits have been or are likely to be realized.

In the usual case, the first contact which a contractor has with statutory renegotiation is upon receipt of a request for information addressed to him by the clearance and assignment officer on behalf of the departmental Price Adjustment Boards. This request is commonly known as a "Letter of Preliminary Inquiry." Under present practice the letter of preliminary inquiry requires the submission of the information outlined by the "Standard Form of Contractor's Report," which is transmitted therewith. That report requires disclosure not only of the extent and distribution of the contractor's renegotiable business but data with regard to profits realized.[2] The purpose of this information is to enable a preliminary determination to be made as to whether or not such evidence of the existence of excessive profits appears as would require the issuance of an assignment for renegotiation. If no such evidence appears, the assignment is withheld and, in due time, renegotiation proceedings will be barred by the expiration of the statutory period of limitation. It is to be noted that no formal clearance of responsibility under the Act is issued in such case. The Boards, until the statutory period has expired, remain free to assign any case if such action appears appropriate in the light of other information which may come to their attention. It is obviously to the advantage of contractors to furnish a prompt and satisfactory presentation of the information required by the letter of preliminary inquiry, if they desire to avoid assignment for renegotiation.

Assignment

If the information required by the letter of preliminary inquiry be not forthcoming promptly or if upon its receipt it is believed that excessive profits may have been realized, the case is assigned for renegotiation to the Department and Service having the predominant interest in the type of products and services furnished by the contractor.[3] The assignment has the twofold effect of placing responsibility for a disposition of the case and of evidencing the authority of the assignee Department to grant a clearance not only on its own behalf but on behalf of all other Departments and Agencies named in the Act.[4]

The responsibilities imposed by the assignment may be discharged only by a settlement resulting from renegotiation proceedings or by a cancellation of assignment issued by the clearance and assignment officer of the departmental boards. Such cancellations are issued on a showing that the contractor is exempt or that the profits realized by him are obviously not excessive. Such requests for cancellation must be supported by a certificate from the assignee Department recommending favorable consideration. The evidence which is required

1. Adopted February 1, 1943.

2. Accompanying the letter of preliminary inquiry, for use by contractors exempt under Subsection (c) (6) of the Act, is a form entitled "Statement and Affidavit as to Non-Applicability of Renegotiation Act." When appropriate, such will be accepted in lieu of the "Standard Form of Contractor's Report."

3. By special arrangement between the Departments, the Procurement and Legal Division of the Office of the Under Secretary of the Navy has undertaken the responsibility of renegotiating "sales representatives" or "brokers" (excepting those selling textiles and foods) who became subject to the effect of the Act by virtue of the amendment of July 14, 1943. By virtue of War Department Circular 45 as amended, the Commanders of the Armed Forces outside the continental United States have the privilege of conducting renegotiation proceedings with respect to contracts entered into under their authority or assigned to them for administration.

4. Power to grant clearances on behalf of all Departments is derived from cross delegations of authority executed by the several Departments and agencies named in the Act.

to support a request for cancellation is somewhat more detailed than that which is required in response to the letter of preliminary inquiry, but less complex than that required for completion of renegotiation.

Information of considerable detail is essential for the conduct of renegotiation proceedings. Heretofore, the several Departments and Services have had different forms by means of which they sought to obtain the necessary financial data. In order to promote uniformity, the War Department has adopted the form known as "Contractor's Information Form for Purposes of Renegotiation," or "Contractor's Work Sheet." Speaking generally, all the information called for by this form must be furnished or satisfactory explanation given as to why such would not be relevant. The information need not, however, be presented on the printed form, if other means are more convenient for the purpose.

When the required financial information has been furnished, a meeting will be arranged between the contractor and representatives of the assignee board or section. At that time the contractor will be given full opportunity to present any relevant evidence which he desires to be taken into consideration. Such evidence may relate to promptness in meeting production requirements, quality of output, economy of operation, technological contributions, comparison of prices with those of competitors, risks incurred, and the like.

In the rare instances where the contractor and the Price Adjustment Section fail to agree on a proper disposition of the matter at hand, the contractor has the right to request that his case be reviewed by the Price Adjustment Board of the Department to which he has been assigned. In such event, the record will be examined by the departmental Price Adjustment Board and, if such action be found to be appropriate, a hearing will be arranged. The Under Secretary of the assignee Department may consent to hear a case in the event that the Price Adjustment Board and the contractor have failed to agree. Should efforts to reach an agreement fail, the Secretary of the Department has the power to take unilateral action to dispose of the matter.

Possible Future Developments

It is anticipated that Congress may by amendment to the Act require returns to be filed by companies whose business is subject to the Renegotiation Act. Whether or not such returns be required, it is believed that most of those companies which were subject to renegotiation with respect to their operations during 1942 will be found to be similarly so subject in 1943. Consideration is being given, therefore, to assigning such companies for renegotiation of their 1943 business without preliminary review of the results of their operations, providing the means, however, for cancellation of such assignments, when appropriate, on the basis of information substantially the equivalent of that presently required by the letter of preliminary inquiry. The difference between review before and after assignment would, from the point of view of the contractor, be more a matter of form than of substance.

By action of the Departments, a Joint Price Adjustment Board has recently been created. That Board will control and determine all matters of policy and further promote uniformity in matters of interpretation and procedure. No basic changes in the administration of the law are anticipated to result from the establishment of this body. It is composed of the Chairmen of the Departmental Boards and a representative of the War Production Board.

Conclusion

It is the settled policy of the Price Adjustment Boards to facilitate for industry a disposition of its renegotiation problems. In conformity with that policy, procedures which have been established for general application will be altered in proper case and on adequate showing. It is recognized that some contractors are faced with serious accounting difficulties in furnishing information required of them, questions of interpretation of the statutory and other exemptions, as well as other problems. The boards and sections will welcome an opportunity to be of service in assisting contractors with these and other difficulties with which they may be faced. There is appended a list of the addresses of the offices of the boards and sections.[5]

5. *Departmental Price Adjustment Boards:* War Department, Room 3D 581, The Pentagon, Washington, D. C.; Navy Department, 718 18th Street, N. W., Washington, D. C., 630 5th Avenue, Room 310, New York, N. Y., 21st Floor, 100 West Monroe St., Chicago, Ill., 727 Financial Center Building, 405 Montgomery St., San Francisco, California; Maritime Commission, Room 4827 Commerce Building, Washington, D. C.; Treasury, Room 5304 Procurement Building, 7th & D Streets, S. W., Washington, D. C.; War Shipping Administration, 39 Broadway, New York, N. Y.; Reconstruction Finance Corporation, 811 Vermont Avenue, N. W., Washington, D. C. *Price Adjustment Sections, War Department:* Ordnance—Room 4E 371, The Pentagon, Washington, D. C.; 700 Frank Nelson Building, Birmingham, Alabama; Room 1501, 140 Federal Street, Boston, Mass.; 38 South Dearborn Street, Chicago, Illinois; Big Four Building, Cincinnati, Ohio; 1006 Terminal Tower Building, Cleveland Ohio; 1852 National Bank Building, Detroit, Michigan; Room 1815, 80 Broadway, New York, N. Y.; 150 South Broad Street, Philadelphia, Penn.; 1202 Chamber of Commerce Building, Pittsburgh, Penn.; 1238 Mercantile Building, Rochester, N. Y.; 3663 Lindell Boulevard, St. Louis, Missouri; 402 Hotel Empire, San Francisco, California; 95 State Street, Springfield, Mass. *Quartermaster Corps*—Room 2049 Tempo B, 2nd & Q Streets, S. W., Washington, D. C.; 521 5th Avenue, New York, N. Y.; 1 State Street, Boston, Mass.; 333 North Michigan Avenue, Chicago, Illinois; Kohl Building, Montgomery & California Streets, San Francisco, California; Woodside Building, Greenville, South Carolina. *Signal Corps*— Room 2C 285, The Pentagon, Washington, D. C.; 1 North LaSalle Street, Chicago, Illinois; 17th & Sansom Streets, Architects Building, Philadelphia, Penn. *Army Air Forces*—Room 5E 1039, The Pentagon, Washington, D. C.; Wright Field, Dayton, Ohio; 67 Broad Street, New York, N. Y.; 420 West Douglas Avenue, Wichita, Kansas; 3636 Beverly Boulevard, Los Angeles, California; Fox Theatre Building, 7th Floor, Detroit, Michigan; Room 636 Enquirer Building, 617 Vine Street, Cincinnati, Ohio; 20 North Wacker Drive, Chicago, Illinois; Room 204, The 4900 Euclid Building, Cleveland, Ohio. *Corps of Engineers*— Room 5160 New War Building, 21st & Virginia Avenue, N. W., Washington, D. C.; 605 Lincoln Road, Miami Beach, Florida; 73 Federal Street Building, Boston, Mass.; 270 Broadway, New York, N. Y.; 101 E. Fayette Street, Baltimore, Maryland; 50 Whitehall Street, Atlanta, Georgia; 1120 Huntington Bank Building, Columbus, Ohio; 332 South Michigan Avenue, Chicago, Illinois; 1114 Commerce Street, Dallas, Texas; 206 South 19th Street, Omaha, Nebraska; 351 California Street, San Francisco, California. *Surgeon General*—Room 419 Maritime Building, 1818 H Street, N. W., Washington, D. C.; 52 Broadway, New York, N. Y.; 12th & Spruce Streets, St. Louis, Missouri. *Transportation Corps*—Room 3A 674, The Pentagon, Washington, D. C. *Chemical Warfare Service*—Butler Building, 200 West Baltimore Street, Baltimore, Maryland.

THE THIRD GREAT ADVENTURE

By HON. HOMER CUMMINGS

Former Attorney General of the United States

I ASSUME that, in the nature of things, there is always a time lag in the adjustment of law to human needs. A virile society is apt to outgrow the legal garments with which it is clothed. Mr. Justice Holmes once observed that "It cannot be helped, it is as it should be, that the law is behind the times."

I am not so sure that this is "as it should be," although a case could be made for that point of view. Of late years, however, marked advances have been made in federal law, especially in the realm of procedure. Here we have well nigh drawn abreast of the times. During the period when I had the honor of being Attorney General nothing more intensely occupied my thoughts or motivated my actions than the urge to improve the mechanism of justice. The people of America have an unquenchable thirst for justice and an instinctive desire to approach ever closer to the fountains of right. That defects of procedure, ingenious technicalities, antiquated forms and long accumulated legal impedimenta should bar their way has always seemed to me one of the deepest wrongs a free people could suffer. Without order there can be no progress and if justice be remote or inaccessible, there can be no order. It has been a source of infinite satisfaction, therefore, to witness many triumphs in these fields and to have a part in the great drama that these efforts unfolded.

Judicial Rule-Making

To restore to the courts, in the fullest measure, their dormant powers of judicial rule-making was worthy of our devoted attention and an achievement that has abundantly justified the labors that brought it forth. We well remember the long, long struggle that culminated in the New Rules of Civil Procedure. We recall the efforts to secure an Administrative Office for the Courts, so that they might be masters of their own budgets, their own dockets and, indeed, their own fate as an independent coordinate branch of the government. All these things were worthwhile and we rejoice that they have come to pass. And now we have embarked upon a third great adventure—the formulation of New Rules of Criminal Procedure. With their final enactment we shall have established, in very truth, a rounded system of judicial rule-making. The Congress took favorable action upon the proposal to confer upon the Supreme Court the necessary power. The Advisory Committee has completed its seventh tentative draft of the New Rules and the Supreme Court has authorized their distribution for study by the Bench and Bar.

The New Rules

We are met here today to consider this draft. It is interesting to observe that the American Bar Association has had a significant and vital part in its preparation. The chairman of the Advisory Committee, Arthur T. Vanderbilt, is a former president of the Association. The chairman of its Criminal Law Section, James J. Robinson, who is one of the organizers of this Institute, is the reporter of the Committee and Alexander Holtzoff, of the Department of Justice, its secretary. I venture to say that the great majority, if not all, of the members of the Committee are members of this Association. The Committee is richly entitled to our confidence as well as our sympathetic consideration and whatever support we can properly give.

The framing of a set of rules of criminal procedure is a difficult business. The protection of the individual members of society against crime is one of the fundamental purposes for which government exists; and yet that purpose can not be adequately served if the mechanism of justice is out of joint. For many years useless and archaic technicalities, the product of a bygone day, have delayed and hampered and at times even frustrated, the successful administration of the criminal law. While concerning ourselves with efficiency and expedition great care must be taken to avoid the impairment of any of the just rights of the accused. Naturally, this protection must be in accord with the fundamental concepts of Anglo-American jurisprudence, which surrounds the defendant in a criminal case with certain well-defined safeguards.

Two Basic Factors

A set of Rules of Criminal Procedure prepared for operation in any American tribunal must, therefore, arrive at a suitable balance and attain a nice adjustment between these two basic factors. I believe that the Advisory Committee has succeeded in performing a difficult and delicate task and that the set of Rules which is presented for our consideration merits, as a whole, our commendation and approval. Indeed, I go further and assert that a monumental work has been performed —a permanent landmark in the progress of our profession.

Address delivered before the Institute on Federal Rules of Criminal Procedure, annual meeting, August 24, 1943.

Uniform Rules present an additional problem peculiar to the federal judicial system. The continental United States is divided into eighty-five judicial districts. In a majority of the districts, court is held in a number of places. While we find federal courts almost continuously functioning in a few metropolitan centers, such as New York and Chicago, in other localities court is held at intervals in cities and towns of moderate size and in still other places the court convenes in small communities only twice or four times a year, each session lasting perhaps only two or three days. Necessarily, a uniform set of Rules should be sufficiently general and flexible to be applicable to conditions prevailing in these various localities. Consequently, federal rules of procedure, be they civil or criminal, must not be bogged down by details and minutiae, which have been the bane of some of the state codes. This problem, too, the Advisory Committee appears to have successfully solved.

The Reforms Suggested

The draftsmen of the Rules fully realized that the edifice they were erecting must rest on the sure foundation of fundamental rights. Nevertheless, the Committee had the courage to pioneer and to propose certain rational and long needed improvements. At all times they have been sedulous in preserving the rights of the accused. Permit me to refer briefly to a few of the suggested reforms.

There is proposed a simplified form of indictment to supplant the all too prolix form that has come down to us through the centuries. I was intrigued by the form of indictment for murder in the first degree. It contains but five lines. It is clear and explicit. It sets forth every element of the offense and accurately acquaints the defendant with the specific crime with which he is charged. This is a great improvement upon the ancient form which could serve only to bewilder an accused and impel his counsel to reach for a microscope to discern some possible defect in so lengthy and dismal a document.

A highly desirable provision of the Rules permits a defendant, except in a capital case, to waive indictment and to consent to prosecution by information. This privilege would be welcomed by many indigent defendants, who are unable to give bail. It would enable them to shorten the period of detention while awaiting trial, for which they might receive no credit. This matter is of especial moment in districts and divisions in which the grand jury convenes only four times or perhaps only twice a year.

The Committee has proposed the elimination of demurrers, motions to quash, pleas in abatement, and pleas in bar. The Rules provide that all objections and defenses raised by any one of these methods shall hereafter be interposed by a simple motion in which all such objections and defenses must be joined. This should result in a reduction of opportunities for dilatory tactics and, at the same time, relieve the defense of embarrassment. Many competent practioners have been baffled and mystified by the distinctions between pleas in abatement, pleas in bar, demurrers, and motions to quash, and have, at times, found difficulty in determining which of these should be invoked. I recall a case in which I was recently concerned in which learned counsel debated amongst themselves for nearly a week which course to pursue and which pleading came first. We ended by filing them all plus a few extra motions for full measure. The court was patient and heard arguments on them all. However, this bootless procedure seems necessary under the present practice, as an erroneous choice might well be fatal. Manifestly, the new Rules in this respect will be beneficial to both the prosecution and the defense, and a vast relief to an overburdened court.

Evidence

The problem of evidence in criminal cases presents grave difficulties. It will be recalled that the Civil Rules reached a rather ingenious solution by providing that the federal courts should consider both the federal rules of evidence as they previously existed and the law of evidence prevailing in the state in which the federal court is sitting and follow whichever of the two, in any particular instance, favors admissability of the evidence as against its exclusion. While this plan has operated successfully on the civil side, it was apparently deemed inapplicable to criminal cases. There was good reason for this distinction. Criminal prosecutions in the federal courts are based entirely on federal statutes and uniformity in the rules of evidence is essential in prosecutions under these statutes.

If uniformity is to be the rule, then what law of evidence should be applicable? It would be obviously inadvisable to adopt the common law of evidence as it existed in 1789. The Advisory Committee took its cue from two very recent decisions of the Supreme Court, in which the Court felt free to adapt and modify common law rules of evidence in the light of present conditions. The formula proposed by the Committee is that the admissibility of evidence is to be governed by the principles of the common law as interpreted by the courts of the United States. This principle will make it possible, in the course of time, for the federal courts to develop a consistent system of evidence.

I observe with interest that pre-trial procedure, which has proved so successful in civil cases, is to be imported by the Rules into criminal procedure. There seems to be no reason why it should not prove useful, especially in long and complicated cases involving voluminous documentary evidence.

I feel that we should welcome the innovation permitting a motion for a change of venue. Lawyers not thoroughly familiar with federal practice are somewhat astounded to learn that they may not move for a change

of venue, even if they are able to demonstrate that public feeling in the vicinity of the crime may render impossible a fair and impartial trial. This seems to be a defect in the federal law, which the proposed rules would cure.

Removal Proceedings

One important feature in federal criminal procedure that has long needed revision is that which relates to the removal to the place of trial of a defendant who is arrested in a district other than that in which the prosecution is pending. If a person is indicted in a state court in Chicago and arrested in Springfield, he would be brought back to Chicago without anything resembling an extradition proceeding. And yet, if a person is indicted in the federal court in Chicago but is located in Springfield, he may not be returned to Chicago against his will, without an elaborate removal proceeding, because Springfield happens to be in a different judicial district. In many districts, in such a proceeding, evidence may be introduced on the issue of guilt and the case practically tried on the merits before a judge or commissioner without a jury. If the decision is against removal there is nothing that the government can do about it. The new Rules approach this subject with restraint and yet rectify the situation by prescribing a uniform procedure which appeals to one's sense of justice. If the arrest is based on an indictment, then upon the production of a certified copy of the indictment, accompanied by proof of identity, an order of removal would issue and no other evidence would be admissible. On the other hand, if the arrest is based on a complaint filed before a United States commissioner or on an information, then evidence would be admissible on the issue of reasonable ground to believe the defendant guilty.

Motion for Judgment of Acquittal

The practice of judgments notwithstanding the verdict, which was introduced into civil procedure by the Civil Rules, is, in a somewhat different form, proposed by these Rules for criminal cases. The present motion for a directed verdict is denominated, what it really is, a motion for judgment of acquittal.

The Rules properly emphasize a pre-sentence investigation before punishment is meted out to a convicted defendant. This is admirable in every way.

Newly Discovered Evidence

The Committee has proposed the abolition of time limitations on motions for a new trial on the ground of newly discovered evidence. This is a courageous and commendable step. The conviction of an innocent person in a federal court is a rarity. Yet, as all human institutions are fallible, such miscarriages of justice have occurred. During my term of office as Attorney General I have known of it in a few instances and was obliged to take steps to retrieve the wrong either by confessing error, if it was not too late to do so, or by securing a pardon. Executive clemency in such an instance is, however, inadequate and unsatisfactory. A judicial remedy should always be available. Such a remedy, in fact, is now open if the newly discovered evidence exculpating the defendant becomes available within a certain time limit. Unfortunately, such evidence is apt to come to light at a later date. There is no reason, in logic, in justice, or in expediency, for limiting the time during which a court may grant a new trial in such cases. I, for one, am not afraid that the courts will be inundated by a flood of frivolous motions of this kind. We may well rely on the good sense of federal judges not to grant such motions except upon sufficient cause.

Appeals

The present federal appellate procedure in criminal cases was greatly improved in 1933 by rules promulgated by the Supreme Court. The civil Rules which came into effect about five years later simplified civil appellate procedure to an even greater extent. I am glad to note that the Rules provide that the same simple practice should govern in respect to all appeals, both civil and criminal.

After the promulgation of the Civil Rules, Judge Parker, Senior Circuit Judge for the Fourth Circuit, one of our great leaders in judicial reform, devised a rule for the Circuit Court of Appeals of that Circuit, which abolished printed records on appeal. Instead, counsel are required to print as appendices to their respective briefs those portions of the record which they desire the court to read. This step naturally resulted in a substantial reduction in printing expenses and focused attention upon matters crucial to the case. It met with such success that other circuits followed the lead. I am glad to note that the Advisory Committee adopted this rule for all appeals in criminal cases. It has been fully tested and has demonstrated its worth and workability.

A study of the preliminary draft convinces me that, as a whole, it constitutes an important and far-reaching advance in federal criminal jurisprudence.

The Advisory Committee, however, earnestly desires our assistance and constructive suggestions in connection with the forthcoming revision of the preliminary draft in order that the final report to the Supreme Court may embody the best thought of the legal profession. In that spirit I desire to submit one suggestion which may be worthy of consideration.

It relates to Rule 5-B, which deals with the subject of the admissibility of a confession. The general rule is well settled that a confession obtained by duress, physical or moral, or by promises or improper inducements, is inadmissible. Rule 5-B, however, would introduce an additional and artificial ground for excluding confessions. It would render inadmissible a statement made by a defendant, in response to interrogation by

an officer or agent of the government, while under detention if the defendant is not brought before a committing magistrate without unnecessary delay or possibly while in the very act of being taken before such a magistrate. Even assuming that this rule accords with the opinions of the Supreme Court in the cases of *McNabb* and *Anderson*, which personally I doubt, nevertheless it is not quite clear to me why such a rule is deemed to be necessary or appropriate. I assume that a trial court would be bound by these decisions in any event. As we have seen, the Committee wisely proposed a general rule that the law of evidence for criminal cases should be the common law as interpreted from time to time by judicial decisions, thus leaving all questions as to the admissibility of particular items of evidence to be determined by the trial court in the light of the controlling decisions and with reference to the actual circumstances presented. It seems somewhat inconsistent to isolate this one point in the law of evidence and make it the subject of a special rule. I am inclined to believe that the matter should be left to its natural development in the hands of the courts. A rigid rule might prove to be embarrassing and might very well result in excluding confessions of the utmost value in determining responsibility for crime and which in justice should be admitted. Moreover, the rule, as written, would, very likely, be open to conflicting interpretations and lead to unnecessary confusion. To put my point more succinctly, this rule, purporting to declare what is and what is not admissible evidence, is an anomaly in a set of rules dealing, in every other respect, strictly with procedure; and introduces an element of inflexibility in an otherwise flexible system.

Conclusion

I have adverted to this matter because I think it worthy of further study. There are several other proposed rules which are apt to create marked differences of opinion, as our impending debate will no doubt disclose. A full and frank discussion is the urgent need of the hour and will lead us more surely to correct conclusions. That the Committee has done an outstanding piece of work I have no doubt. They are entitled to the gratitude of the Bench and the Bar. Let us give them the suggestions they solicit and speed them upon the great task they are discharging with such marked efficiency.

THESE verses written by James Patrick McGovern, of the District of Columbia Bar and a member of the American Bar Association since 1913, are here reprinted from the *American Legion Magazine*. The author served as a captain in the American Expeditionary Forces during the first World War.

The War Effort

Effort for this war? In freedom's hour
And very life's? Vain word of compromise
To dull our Nation's will to win, our power,
While civilization falters—lives or dies.

Effort for this war? Best terms are tame,
But this breathes doubt, and men who falter fail,
When action must follow thought like ball and flame,
And strength and truth inevitably must prevail.

Effort for this war? The martial call
To warriors on land, in sky, on sea,
Fortifying them to give lives—all,
For love of the Nation's reverent memory?

Effort for this war? At home, even those
Must serve with fullest heart and readiest hand
While light at Armageddon overthrows
Darkness, so that peace may smile in every land.

BOOK REVIEWS

Challenge to Freedom, by Henry M. Wriston. 1943. New York: Harper & Brothers. Pp. 223. $1.50.—A powerful, challenging and arresting voice is speaking to the American people through the pages of this little book by President Wriston of Brown University. From the point of view of a man who believes that the strength of the American experiment in government was, and still is, the conception of the dignity and dynamic influence of the individual American citizen and of his enterprising spirit of adventure, he challenges the "defeatist" thinking of the political, business and "social" leaders, regardless of political affiliations, since the turn of the century, with its resulting attempt to catch the will-o-the-wisp of "security" in a dangerous world where, in the long run "security" can come only as the result of the struggle of enterprising individuals to produce something to secure in the face of uncertainty. It is like a fresh breeze in a stifling atmosphere. It describes the nature of the American "opportunities" which the men in the armed forces will expect after the war. It states a point of view which should make it required reading for every American legislative, executive or judicial official, leading citizen, "man in the street," and college student. In two hundred and twenty-three pages it contains ideas which deserve thought for many times that number of years.

If these words seem excessively enthusiastic, I suggest that you test them by examining the book to see if it does not help you to think more clearly about current problems in the government of this country.

As illustrating what may become a rising tide of balancing thinking about the future, it is interesting to compare this book with the article by Hatton W. Sumners of Texas in the September *Reader's Digest,* and the speech of Clayton Rand of Mississippi in the *Congressional Record* of September 22, pages A 4264-6.

FRANK W. GRINNELL

Boston, Massachusetts

Judah P. Benjamin.—Confederate Statesman, by Robert Douthat Meade. 1943. New York, London, Toronto: Oxford University Press. Pp. 432, XIV. $3.75. —The outlines of Benjamin's career are known to most lawyers. He was a United States senator and a member of Jefferson Davis' cabinet. After the downfall of the Confederacy he fled to England. There he became one of the leaders of the bar. While building up his practice in England he wrote *Benjamin on Sales,* which, although it is no longer found in working law libraries, is still well known because of the references to it in older cases. He is also popularly regarded as the first Jew to rise to high public office in the United States but the reviewer learned from Mr. Meade that Benjamin was preceded in the Senate by another Virgin Island Jew, Yulee of Florida.

It looks, on the surface, like a wonderful opportunity for a biographer. Even Benjamin's marital relations were, to say the least, peculiar. If there were any extra-marital relations, Mr. Meade is far too conventional to discuss them.

Few people, in Benjamin's lifetime, denied him the adjective "clever." Many called him an adventurer—some used the adjective "unscrupulous." One thing is clear. He started with very little and he showed a remarkable ability to take care of himself.

Mr. Meade has made a great accumulation of facts. His work is evidently painstaking and appears to be accurate. But it does not explain Benjamin. The author has assembled the bricks, but he has not built a house.

Mr. Meade, for example, presses the point that Benjamin was no great believer in slavery. He even considered emancipating the slaves in order to obtain English recognition of the Confederacy or offering the Negroes freedom in return for fighting in the Confederate Army. Then, what was the war all about? The abstract principle of the right of secession?

If this is the best that an apologist can do, Benjamin's reputation is in a sorry way. But it is not. Mr. Meade has ignored all the real problems. What he has given us is a mass of detail, but he has not even attempted to decipher the pattern.

KENNETH B. UMBREIT

New York City

Liberty Concepts in Labor Relations, by Byron R. Abernethy. 1943. Washington, D. C.: American Council on Public Affairs. Pp. XI, 119. $2.50—An appropriate sub-title for this treatise might be, "Liberty Debunked." The author's thesis, repeatedly stated, is that it is "futile to talk of liberty in the abstract," since there is no definition of liberty which will be agreed to by both management and labor and each side to this "power conflict" adopts such definition as may suit its interest in a particular situation. As a solution to this conflict, the author recommends that the aims of society be determined, and that such specific liberties as foster those aims should be protected and the remaining liberties should be discarded (p. 12). The choice

of social purposes is to be made by the majority and enforced by the government, which "must have power to suppress private power and destroy specific freedoms which conflict with these determined goals of society, and to protect other specific liberties which are in harmony with the end of society" (p. 91).

Seven specific liberties are discussed. The first three, asserted by management, are freedom of enterprise, freedom of contract, and freedom of property. The last four, asserted by labor, are freedom of association, freedom to bargain collectively, freedom to strike, and freedom of expression. The author does not attribute to either management or labor a "conscientious concern for genuine freedom," but regards the invocation of liberty merely as a "technique of power in the industrial conflict" (p. 6). However, he makes it plain that he believes that the specific liberties asserted by labor are in harmony with legitimate social ends and therefore should be protected, while the liberties asserted by management are in conflict with such ends and therefore should be limited or destroyed.

It has been the fashion for some time for writers in academic circles, such as the present author, to deny the validity of abstract concepts as bases for solving social conflicts. Lawyers who actually participate in such conflicts will agree that the application of a general concept in any situation necessarily depends on the particular facts and the weighing of conflicting social interests. But there has heretofore been a feeling among Americans generally that there are liberties which are guaranteed protection even when they conflict with the social purposes of the majority. At the present time, the policy of the national government coincides with the social purposes of organized labor and it may seem expedient for labor to take the author's view that liberties should be sanctioned or discarded as the majority wishes. But what will happen if the pendulum swings the other way, as recent laws enacted by some states indicate that it may? Would it not be a serious practical mistake for labor, or any other group, to take the position that liberty concepts have no legitimate force except in so far as they further the aims of the current majority? Are there not certain rules of the game which should be respected, no matter which side happens to be winning?

JAMES P. HART

Austin, Texas

Towards an Abiding Peace, by R. M. MacIver. 1943. New York: The Macmillan Co. Pp. 195. $2.50.—This is a very timely and readable book for those who ask themselves whether mankind is doomed to self-destruction in one terrible war after the other. The author, Professor MacIver of Columbia University, long famous as an authoritative writer on sociology and politics, presents a very good case for the possibility of maintaining a permanent peace, if the world is willing to pay the price—a price which he considers more psychological than material.

He insists that certain present day prejudices, illusions, and traits of thought must be discarded, and his discussion of the international economic terms necessary for an enduring peace is thought-provoking and may startle some of us into a more realistic point of view. The closing chapter dealing with the future of democracy is particularly challenging to Americans.

LURENA TOLMAN STUBBS

Chicago, Ill.

What Price Freedom?, by Frederick W. Reed. 1942. Boston: Bruce Humphries. Pp. 194.—The author of this volume of essays on a wide range and variety of subjects —political, economic, religious and ethical—has lived through nine decades, and his life has been strenuous, rich, useful and adventurous. His law practice alone covers half a century, and he was the father of the Minneapolis Conciliation and Small Debtors' Court, a remarkably successful institution that should have served as a model and example to many other communities.

Mr. Reed, though always busy, has found time for reflection and study. He loves wisdom and admires the men who have lived simply, worked for great causes, promoted democracy and good government, and cared little for wealth or material success. His ideas reveal independence of thought, intellectual honesty and knowledge of human nature. He believes in law, not in force; in international cooperation, not in isolation; in clean politics, in the proper use of the ballot, and in a balanced, liberal education, an education that emphasizes character building and devotion to the common good.

The essays on labor, on war, on the true lessons of the peace of Versailles, on our present duty and rôle in world affairs are particularly timely and enlightened. One or two essays are out of date, notably that on Stalin and the Russian government. The one on agnosticism is woefully inadequate. Mr. Reed apparently is unfamiliar with the works of Spencer, Huxley, Tyndall, Haeckel, Morley, William James, Leuba, and other modern thinkers whose theological agnosticism is not open to his attacks. Agnosticism is not incompatible with nobility, humanity and high ideals generally.

VICTOR S. YARROS

La Jolla, Cal.

Trading with the Enemy in World War II, by Martin Domke. 1943. New York: Central Book Company. Pp. XV, 640. — This is undoubtedly the best work that has yet appeared on the subject of trading with the enemy.

The book is divided into two parts—the first half being discussion of the subject, and the second a com-

pilation of pertinent documents, laws and court decisions from the Anglo-American world on the subject. With an Appendix that contains an exhaustive table of statutes and regulations covering most of the allied nations in exile and Germany, Italy and Japan, the text proper treats in detail all the various problems arising out of restrictions on trading with the enemy. In the true spirit of competitive law, the author discusses the law bearing on similar problems in all countries. The exhaustive nature of the subject-matter and practical insight of the author is shown by the discussion of problems of stateless refugees, enemy controlled corporations, governments in exile and similar subjects covering twenty-one chapters.

In the realization that law is no longer contained merely in statutes and cases, the writer goes exhaustively into decrees, executive orders and rulings of administrative bodies to give a thorough picture of the mass of regulations surrounding various aspects of the problems involved in economic warfare. Due to the completeness of the author's grasp of this maze of minute details, the book is a mine of source material for anybody having problems in the field.

Like many books on comparative law, it confines itself merely to a description avoiding extended discussion or criticism of the functioning of administrative machinery or the overlapping work of government agencies, a subject which might have proved a very fruitful, though not necessary, field for examination.

Throughout the work there is a consciousness that international law is growing and developing in a new field of activity where the ever-expanding interferences of governments, both *de facto* and *de jure*, with the lives and property of their citizens, is causing a myriad of problems far beyond the usual ken of the lawyer. Here one sees economics, race hatred and power politics, partly exposed through the thinly veiled guise of law and decrees, shaping a new type of career for the international legal expert.

As a whole the work is a remarkable compilation especially in light of the shortness of time available for its compilation and the fact that it reports and discusses cases decided and decrees issued right down to the date of publication. It is certainly a useful tool for any lawyer practicing in the field.

FREDERICK K. BEUTEL

Washington, D. C.

The Government of North Africa, by Herbert J. Liebesny. 1943. Philadelphia: University of Pennsylvania Press. Pp. 130. $1.50.—The first of a series of "African Handbooks," which will include reports on mineral and food resources, labor problems, and colonial policies, as well as on government in various parts of the African continent, this product of the collaboration of the African Section of the University of Pennsylvania Museum and a Committee on African Studies at the University is a competent and unprejudiced account of the administrative and legal organization in Algeria, which is a part of the French national territory, and in Morocco and Tunisia, which are nominally independent states under French protection. The American lawyer will be particularly interested in the operation of "administrative dualism" in the protected states, in each of which a native sovereign reigns but a French Resident General governs. He will find in the author's description of the Islamic and customary laws applied in native courts, in Algeria as well as in the protected states, some indication of the complexity of the problems of government in North Africa. The book affords helpful background for the discussion of the political problems which will be raised by demands of educated Arabs and Berbers for revision of French relationships with them in the light of the Atlantic Charter. Its usefulness in this respect is increased by the inclusion, in the first chapter, of an account of legislative and other developments up to June, 1943.

EDGAR TURLINGTON

Washington, D. C.

A Handbook of Psychiatry, by P. M. Lichtenstein, M. D., and S. M. Small, M. D. 1943. New York: W. W. Norton & Co. Pp. 330. $3.50.—This little book may seem to have a value for lawyers because one of the co-authors is P. M. Lichtenstein, who has both medical and law degrees and is in charge of psychiatry and legal matters for the district attorney, County of New York. But unfortunately, although this connection would seem to give Dr. Lichtenstein peculiar advantages in the matter of stressing the legal aspects of psychiatry, these aspects are only casually touched upon in *A Handbook of Psychiatry*.

This book really is a very brief, smoothly written, fairly accurate condensation of what is usually found in the larger textbooks of psychiatry intended for medical students. It is not simple enough for the layman, and this includes lawyers, for technical terms are frequently used without special explanation or definition. It is not detailed enough to constitute a text in psychiatry for the lawyer to refer to it as an "authority," nor is it the type of technical synopsis which would aid either the physician or the lawyer in marshaling his thoughts on the problem in order to take them to a more detailed textbook.

It attempts to be all three, for the excellence of style and the simplicity that it manifests would seem to make it more valuable for the layman than for the physician, its systematic approach would indicate an interest by the authors in having medical men use it, and the brief bibliography given at the end of each chapter would suggest its use as a finger post pointing down more highly technical roads.

The usual subjects in any psychiatry text are dealt with: namely, how the psychiatric examination is made; the various psychoneuroses—mild mental diseases characterized by paralysis, fears, anxieties, body complaints—and the psychoses, which are those diseases usually considered insanities by legal definition. The lawyer who wants a quick "look-see" if he knows what the diagnosis is in his case might find his ideas clarified somewhat by approaching the appropriate chapter in this book.

In addition, intelligence tests are simply and accurately described so that the lawyer, who in the past has had no opportunity of learning about them except in ponderous scientific texts, can avail himself of this information easily.

There is one pitfall for the lawyer if he intends to use this book, and that is that cases are cited and given as examples. These, with the accompanying classic description of each disease, will lead the attorney and the members of the patient's family to believe that a diagnosis is incorrect if all of the symptoms of the mental disorder described were not present. The layman often is unable to recognize these symptoms and oftentimes a diagnosis can be properly made, yet the symptoms may occur in such disproportion to other symptoms that the picture may seem to be completely dissimilar from the classic picture presented in the psychiatric text.

To paraphrase a well known quotation, a reading of this book impresses upon one that: What this country needs is a good book on medico-legal psychiatry.

LOWELL S. SELLING, M. D.

Detroit, Michigan

Reflections on the Revolution of Our Time, by Harold J. Laski. 1943. New York: The Viking Press. Pp. 420.—This new work by Professor Laski, the British socialist and scholar who knows this country well and has written ably and thoughtfully on our government and institutions, has a remarkably wide range and is thoroughly up to date. It discusses Fascism and Soviet-Communism with exceptional insight and grasp. It shows in what sense the Russian regime is basically democratic, despite its continued suppression of freedom of speech and religion, and wherein it differs from the vicious totalitarianism of Hitlerism. It is, on the whole, judicious and philosophical.

However, many progressive readers fully aware of the true nature of the revolution of our age, and prepared for significant changes in the economic and political systems of Europe and America, will be puzzled by Professor Laski's immediate demands or proposals. He has been essentially Fabian in his thinking and has never expected or demanded more than dominant public opinion was prepared to support. To be sure, he has repeatedly expressed the apprehension that the wealthy and ruling class in Britain might resist by force and violence any truly radical program of social reform —a Socialist program, specifically—and that popular government is tolerated by that class because thus far the masses have not demanded any really fundamental changes in the economic system. The same fear is acknowledged in the present volume. In other words, Professor Laski believes that the revolution of our time, the revolution of and by the masses of the common people, may be defeated or sabotaged by a counter-revolution on the part of the privileged minority, whether it openly proclaims itself Fascist or operates under some deceptive slogan.

Professor Laski does not trust Churchill and his group; neither has he much faith in the elderly trade union leaders now patriotically collaborating with that group. He longs for a bolder and more aggressive leadership, and he tells us exactly what such a leadership would insist upon here and now in the way of concessions from wealth and economic power. Here are the "fundamental bases of economic power" which, according to Professor Laski, must be placed at once in the hand of the community if we are to emancipate ourselves from the economics of scarcity and insure abundance and employment for all: Social control of the supply of capital and credit; State ownership and control of the land; State control of the import and export trade; State ownership and control of transport, fuel and power.

Now this program is not equivalent to total Socialism. It does not envisage the taking over by the State of all industry and agriculture. Still, it is a pretty radical program, and Mr. Laski does not claim that a majority of the British voters are prepared to work or fight for it. The Labor party does not demand it of the Churchill government, because it knows that the demand would be rejected, and that the voters, if appealed to, would sustain the rejection. What then is the grievance of the small radical minority?

Yet Mr. Laski thinks that the British leaders ought to take advantage of the "present mood" (whose mood?) and that failure to do so will appear as unpardonable cowardice to posterity. There is a glaring inconsistency in this admonition, and a lack of the realism which generally characterizes Professor Laski's discussions of pending and impending developments.

However, the book is distinctly a stimulating tract for the times, and its sweep and scope should commend it to enlightened readers.

VICTOR S. YARROS

LA JOLLA, CALIFORNIA

Moulders of Legal Thought, by Bernard L. Shientag. 1943. New York: The Viking Press. Pp. IX, 253.—This is a collection of essays formerly published in law reviews. Its Contents lists such subjects as Cardozo, Romilly, Pollock, and Lords Mansfield, Macmillan and

Wright. The Foreword states that this was considered "an appropriate time to emphasize the close kinship between students of the law in this country and in England, the significant similarity in our ideals and in our aspiration to make the law the continuing and progressive instrument of liberty, of truth and of justice."

The respect for law of English-speaking people has frequently been noted. Less noted, though much more noteworthy, is their effort to make and keep the law respectable. This book serves as a partial portrayal of that effort.

No one capable of seeing the events of our day in historic perspective can fail to sense that the present war is but man's latest and greatest effort in "The Struggle for Law." Our only hope for security and freedom depends on our ability to substitute for international anarchy an international juridical order. Man's evolution in science, art, religion, trade, has encompassed the world. Now his crying need is peaceful control of world relationships. That need can be supplied only through the law.

These essays were written primarily to show how legal principles are developed by the judicial process and also to portray the contributions of some eminent judges and lawyers and one teacher to our legal evolution. Among them is an informative chapter entitled "From Seditious Libel to Freedom of the Press." They contain much detailed information of value to the practitioner.

But when considered together they reveal how the law has been continuously moulded to man's growing need, and thus they sustain our hope that it may be extended to meet our world need. The devotion to justice of our great jurists is an inspiring story, a clear light for our lurid times. The knowledge of what has been done should give us the "power of knowing what to do."

The work is richly annotated. The following is an example that carries the book's broad import:

> What Mr. Justice Story wrote of Lord Mansfield in 1821, in the florid style of the period is, in essence, still true today: "England and America and the civilized world lie under the deepest obligations to him. Wherever commerce shall extend its social influences; wherever justice shall be administered by enlightened and liberal rules; wherever contracts shall be expounded upon the eternal principles of right and wrong; wherever moral delicacy and judicial refinement shall be infused into the municipal code, at once to persuade men to be honest and to keep them so; wherever the intercourse of mankind shall aim at something more elevated than the groveling spirit of barter, in which meanness and avarice and fraud strive for mastery over ignorance, credulity and folly, the name of Mansfield will be held in reverence by the good and the wise, by the honest merchant, the enlightened lawyer, the just statesman and the conscientious judge." Story, *Miscellaneous Writings* (1852) 205.

ROBERT N. WILKIN

Cleveland, Ohio

The Book of the States, 1943-1944, published by The Council of State Governments, Chicago. 1943. Pp. XII, 508. $4.—This is the fifth biennial publication of this character, and presents a useful and convenient analysis of the activities of the states, together with a detailed tabular analysis of state functions, and a directory of state administrative officials. The volume is of distinct value to those who desire or need to follow state activities in this period of governmental wartime operations.

Chicago, Ill. WALTER F. DODD

RECENT PUBLICATIONS

A DICTIONARY OF ABBREVIATIONS, compiled by Herbert John Stephenson. 1943. New York: The Macmillan Company. Pp. 126. $1.75.

THE ARMY AND THE LAW, by Garrard Glenn, revised and enlarged by A. Arthur Schiller. 1943. Columbia University Press. Pp. viii, 203. $2.75.

CHARLES J. BONAPARTE, PATRICIAN REFORMER: HIS EARLIER CAREER, by Eric F. Goldman. 1943. Baltimore: The Johns Hopkins Press. Pp. 150. Paper, $1.50.

ANNUAL SURVEY OF ENGLISH LAW 1940. 1943. London: Sweet & Maxwell, Limited (for the London School of Economics and Political Science). Pp. xxvii, 295. 15s. net.

GERMANS IN THE CONQUEST OF AMERICA: A SIXTEENTH CENTURY VENTURE, by German Arciniegas, translated by Angel Flores. 1943. New York: The Macmillan Company. Pp. 217. $2.50.

LAW AND LIABILITY IN PUPIL TRANSPORTATION, by Harold H. Punke. 1943. The University of Chicago Press. Pp. v, 291. $3.

LINCOLN—DOUGLAS: THE WEATHER AS DESTINY, by William F. Peterson. 1943. Springfield, Ill.: Charles C. Thomas. Pp. x, 211. $3.

PARLIAMENTARY PRIVILEGE IN THE AMERICAN COLONIES, by Mary Patterson Clarke. 1943. Yale University Press. Pp. xi, 303. $3.

PATENT LAW FOR CHEMISTS, ENGINEERS AND STUDENTS, by Chester H. Biesterfeld. 1943. New York: John Wiley & Sons, Inc. Pp. v, 225, $2.75.

TRAGEDY AT LAW, by Cyril Hare. 1943. New York: Harcourt, Brace and Company. Pp. 301. $2.50.

TIME FOR CHANGE: A PROPOSAL FOR A SECOND CONSTITUTIONAL CONVENTION, by Alexander Hehmeyer. 1943. New York: Farrar & Rinehart, Inc. Pp. xi, 211. $2.

WAR'S END AND AFTER: AN INFORMAL DISCUSSION OF THE PROBLEMS OF A POSTWAR WORLD, by Stuart Chevalier. 1943. New York: The Macmillan Company. Pp. xii, 337. $2.75.

JAMES MOORE WAYNE, SOUTHERN UNIONIST, by Alexander A. Lawrence. 1943. Chapel Hill: The University of North Carolina Press. Pp. xiv, 250. $3.

THE CONSCIENTIOUS OBJECTOR AND THE LAW, by Julien Cornell. 1943. New York: The John Day Company, Inc. Pp. x, 158. $1.75.

SECTION ACTIVITIES AT ANNUAL MEETING

Section of Corporation, Banking and Mercantile Law

BY an amendment to the Constitution of the American Bar Association, unanimously adopted by the House of Delegates at the recent convention in Chicago, the name of the Commercial Law Section was changed to the "Section of Corporation, Banking and Mercantile Law." This change was made because the members of the Section felt that the title "Commercial Law Section" did not accurately describe the Section's field of activities; that the new name would describe more accurately the scope in which the Section is active, and would attract a larger membership from the bar generally throughout the country. The majority of lawyers daily have practical problems, arising in connection with the corporations which they represent, the banks in which they may be interested or in the broad field of general mercantile law. This Section, therefore, becomes one which contemplates giving help and assistance in those problems and invites all lawyers who are interested to participate.

During the past year, the Section has been active in watching for legislation which might be introduced, having for its purpose the establishment of an administrative agency for the handling of debt adjustments in smaller businesses because of the war and has gone on record, through a resolution unanimously adopted by the House of Delegates at its March meeting, as opposing the establishment of such administrative tribunal in lieu of the present method of handling debt adjustments through the federal courts; it has likewise been active, through its committee on banking, in aiding uniform legislation in connection with various banking practices; it has given considerable thought and study to the advisability of recommending an amendment to Sections 268 and 270 of the Chandler Act with the aim of establishing a proper tax basis for reorganized corporations; it has, in addition, prepared but does not advocate, a model Federal Incorporation Act which can be held in readiness for use and discussion in the event that such legislation should ultimately be proposed in Congress; it has, through its committees, covered all new matters dealing with conditional sales, sales and use tax, negotiable instruments; it has also interested itself in aiding the Commissioners on Uniform State Laws in connection with its work on the New Proposed Uniform Sales Act.

A report of the Section meeting will be prepared and printed for distribution to the Section members within a reasonable period of time.

The reelected officers and the council members of the Section on Corporation, Banking and Mercantile Law cordially invite each member of the Association to join with them in the Section's work. Plans for the forthcoming year include a continuation of the work already in progress, a broader scope of activities within the legal confines of the Section and a membership drive which we trust will be successful.

Section of Criminal Law

THE Section of Criminal Law opened its sessions with the annual message to the Section from the Attorney General of the United States and then continued a conference on its scope and plan for 1943-1944, in which the discussion was led by the chairmen of Section committees.

The principal activity was participation, with the Section of Judicial Administration, the Committee on Improving the Administration of Justice, and the National Conference of Judicial Councils, in conducting an Institute on the preliminary draft of the Federal Rules of Criminal Procedure. The same groups joined in sponsoring a dinner on the evening of August 23.

At the morning session of the Institute, Hon. George Rossman, chairman of the Section of Judicial Administration, presided. Hon. Homer Cummings made the opening address, and Judges Harvey M. Johnsen and Orie L. Phillips were the respective chairmen of the first two discussion panels. At the afternoon session, the chairman of the Criminal Law Section presiding, the opening address was delivered by Hon. Wendell Berge. Judges Walter C. Lindley, Merrill E. Otis and Herbert F. Goodrich acted as chairmen of the three discussion panels. The transcript of the addresses and discussion will be used by the Supreme Court's Advisory Committee on Rules of Criminal Procedure in completing a final draft of the Rules. The Institute aroused spirited discussion, and was comprehensive in scope.

Section of International and Comparative Law

NOT only post-war planning but the necessity for immediate action in the field of International and Comparative Law were stressed at the meeting of the Section. Much can and should be done at once in order to utilize the cooperative spirit which the war has developed, particularly in this hemisphere, for the purpose of obtaining a friendly

solution of numerous problems which, if consideration be postponed, may arouse discord.

The Section held its customary two half-day sessions and its luncheon. Three matters received predominant consideration. The Committee on Trial and Punishment of War Criminals presented a report which should be read by every lawyer. It will enable him to evaluate the mass of articles, many highly emotional, which are being published on this subject. The Committee on Post-War Judicial Organization's carefully prepared but tentative report, together with an address dealing with international claims and a resolution on the subject prepared by the Section council, were referred back to the Section in the hope of having presented a concrete plan for an international judicial system at the spring meeting of the House of Delegates. Whether an international constitution and bill of rights is practical and what it should be, were aggressively discussed, but no action was taken.

The recent meeting at Rio de Janeiro of the Inter-American Bar Association was reviewed and many Section committees brought in excellent reports, but the only action taken (except as above indicated) related to international fisheries and aviation. The House of Delegates reaffirmed its interest in immediate action concerning the protection of coastal fisheries; the aviation matter went over for joint consideration with the Committee on Aeronautics.

This year's luncheon meeting was exceptionally well attended. It was addressed by Major General Myron C. Cramer, Judge Advocate General of the United States Army, who gave a comprehensive outline of the functions of his department. Sir Owen Dixon, the Australian Minister to the United States, read a most interesting paper briefly but succinctly pointing out the differences between the Australian and American conceptions of the basis for a constitution.

New officers are: Chairman, Mitchell B. Carroll, New York; vice-chairman, Major Willard B. Cowles, Washington, D. C.; secretary, Edgar Turlington, Washington, D. C.; members of Council, Edward W. Allen, Seattle; Amos J. Peaslee, Clarksboro, N. J.; George M. Morris, Washington, D. C., and John P. Bullington, Houston.

Section of Insurance Law

GENERAL sessions of the Section of Insurance Law were highlighted by the address of welcome by Director Paul F. Jones of the Illinois Insurance Department, and addresses by Director Horace L. McCoy of the Veterans Administration Insurance, Commissioner John B. Gontrum of Maryland, and Congressman Jennings Randolph.

Reports presented by chairmen of the various committees of the Section indicated great activity during the year. Outstanding among the accomplishments was that reported by Henry Moser, genial chairman of the membership committee—a new high of 2,715 members in the Section despite the handicap of wartime conditions.

Ten round table meetings were held the programs for which included interesting and instructive papers on phases of insurance law applicable to problems of the members of the respective committees.

The influence of the war was to be noted particularly in the interest manifested in problems of aviation law, air transport insurance, accident and health insurance in wartime, and the handling of war death claims under life insurance policies.

The annual dinner of the Section, held in the ballroom of the Medinah Club on Tuesday evening, drew a large attendance. A reception preceded the dinner.

Chase M. Smith, chairman, presided at the general sessions, and the following committee chairmen conducted the round table sessions of the respective committees:

Automobile Insurance Law, F. B. Baylor; Aviation Insurance Law, W. Percy McDonald; Casualty Insurance Law, Hugh D. Combs; Fidelity & Surety Insurance Law, J. Kemp Bartlett, Jr.; Fire & Inland Marine Insurance Law, N. W. Davies; Health & Accident Insurance Law, Oliver H. Miller; Insurance Law Practice & Procedure, Wilbur E. Benoy; Life Insurance Law, Ralph H. Kastner; Marine Law, George E. Beechwood; Workmen's Compensation Insurance Law, Clarence W. Heyl.

Frank E. Spain of Birmingham, Alabama, was elected Section chairman for the ensuing year; vice chairmen will be Henry S. Moser and J. Harry Schisler, with Secretary John F. Handy continuing in office.

Section of Judicial Administration

ALL of this year's meetings of the Section of Judicial Administration, with the exception of the one in which officers were elected, were conducted jointly with the Section of Criminal Law, the National Conference of Judicial Councils, and the Association's Special Committee on the Improvement of Judicial Administration.

The first of these joint meetings was held on August 23. It was opened with a preliminary report made by Judge Robert Simmons, chairman of a committee of the Section charged with the study of the need in the states of an Administrator for the State Courts. The final report will be made to the 1944 session of the Section. Following receipt of Judge Simmons' report, the Section's Committee on State Administrative Agencies reported that it had published a brochure containing four treatises on four phases of State Administrative Law. The writers were Ralph Hoyt of Milwaukee, Wisconsin; Carl McFarland of Washington, D. C.; Professor Kenneth C. Sears of the University of Chicago Law School, and Judge Frederic Miller of the Supreme Court of Iowa.

August 23, the Section, in company with the three above mentioned organizations, held its annual dinner. The speakers were Hon. Merrill E. Otis, Kansas City, Missouri, judge of the United States District Court; Hon. Hal W. Adams, Mayo, Florida, judge of the Florida Circuit Court, and Dr. Robert M. Hutchins, president of the University of Chicago. Judge George Rossman, chairman of the Section, presided.

Most of August 24 was devoted to a forum on the draft of the new rules governing the trial of a criminal case in the federal courts. The forum was opened with an address by the Hon. Homer Cummings, former United States Attorney General. At the conclusion of the address the analysis, criticism and commendation of the rules proceeded under the auspices of five panels with approximately twenty judges, lawyers, and law teachers participating. The discussions were excellent. Judge Rossman presided over the morning session and James J. Robinson, chairman of the Criminal Law Section presided over the afternoon session.

All of the above meetings were attended by unusually large numbers.

At the close of the Criminal Rules forum, the Section elected its officers for the year ahead. For chairman it chose Judge Orie L. Phillips, Denver, Colorado, a member of the United States Circuit Court of Appeals, and for vice chairman, Judge Laurance M. Hyde, Jefferson City, Missouri, a member of the Supreme Court of Missouri.

Junior Bar Conference

ONE of the most stimulating annual meetings in the history of the Junior Bar Conference was held, with emphasis on the war and the post-war problems of young lawyers.

Chairman Joseph D. Calhoun of Media, Pennsylvania, in an interesting analysis of the present and future of the Junior Bar movement, urged the Conference to a mobilization of its resources for meeting the problems of young lawyers returning from military service.

Gardner Cowles, Jr., the "Mike" Cowles of Willkie's *One World*, made one of the outstanding addresses of the entire bar meeting on the subject of "The Dangers and Opportunities of the Peace." He impressed upon his audience the necessity for the formulation of a clear-cut policy as to the kind of peace the United States it willing to negotiate. He further stated: "The price of peace will not come cheap; but it is a product worth buying. The future of the world will be decided by the willingness on the part of this and of other nations to make present adjustments, even at a sacrifice, for the sake of future benefit. That willingness will depend to a large degree upon the attitude of mind of the lawyers and business men of the world. Not Congress, but men like you, must decide whether or not to pay the price for peace."

George Maurice Morris, President of the American Bar Association, Hon. George Rossman, Oregon Supreme Court Justice, Samuel S. Willis, first chairman of the Junior Bar Conference, Major Edgar B. Tolman, Editor-in-Chief of the AMERICAN BAR ASSOCIATION JOURNAL, Sir Donald Bradley Somervell, Attorney General of England, also addressed the meeting. Tappan Gregory, chairman of the War Work Committee, spoke of the fine work performed by the Junior Bar Conference in preparing Compendiums in connection with the Legal Assistance program in army and navy posts.

Robert E. Freer, of Washington, D. C., Director of the Public Information Program, presented, for the enjoyment of the meeting, a copy of the "Iowa Round Table" as usually presented over station WHO, Des Moines. Participating in the discussion entitled "Punishment of those Criminally Guilty for the War" were Justice Frederic M. Miller, Ray Nyemaster, Jr., John Howland, and Hiram S. Hunn, all of Des Moines.

Following the opening session in the Drake Hotel on Sunday afternoon, the Younger Members Committee of the Chicago Bar Association and the Section of Younger Members of the Illinois State Bar Association, entertained the Conference at a reception and buffet supper in the evening.

Colonel Edward S. Shattuck, general counsel of the Selective Service System of the United States, in a frank and enlightening address before the Monday luncheon of the state chairmen and delegates from affiliated junior bar groups, presented the viewpoint of the Selective Service System in the obtaining of necessary military personnel. Following his address Hubert D. Henry, secretary of the Conference, conducted a round table conference of the problems of Junior Bar groups under wartime conditions.

On Tuesday the final general session of the Conference was held, at which James P. Economos, the new chairman of the Conference, conducted a special program on the problems of the administration of justice in Traffic Courts, particularly in regard to war workers and military traffic violators. A panel discussion on "Post-War Problems of the Traffic Court" was led by Watson Clay of Louisville, Kentucky, chairman of the Traffic Court Committee. Participants were Sidney J. Williams, general manager, National Safety Council; State Senator Walker Butler, Illinois; Dr. David G. Monroe, Director of Research and Information, Northwestern University Traffic Institute, Evanston, Illinois; Judge Harry H. Porter, municipal court, Evanston; Charles S. Rhyne, executive director, National Institute of Municipal Law Offices, Washington, D. C.; Emile O. Bloche, city prosecutor, Oak Park, Ill., and Chief Ritter and Lieutenant Westwick, representing Harry Yde, superintendent, Illinois State Police.

The Conference in concluding its deliberations dedicated its tenth year to preserving its organization

and program for the duration. Each member realized that a greater responsibility than ever was due his colleagues in the military service.

The program of the Section concluded with a dinner dance on Tuesday evening which included a farewell party for some members who were entering service and with the presentation of a gift to the retiring chairman.

Section of Legal Education and Admissions to the Bar

THE Council of the Section of Legal Education at its meeting in Chicago on August 22 had before it a number of important questions. Several of these touched upon the standards on legal education of the American Bar Association. The Council reaffirmed the position it took in 1942, and so gave added emphasis to it, that there must be no relaxation in the substance and spirit of these standards, and in all of its actions it has held firmly to that position.

Much of the time of the Council and of the Section, which met on August 24, was devoted to the subject of legal education—its content and machinery for its administration—in the war and post-war periods. The bar is articulate today on the need for refresher courses in law for young lawyers on their return from the service. Actually, though, this is but the immediate and dramatic phase of a larger program of advanced legal education for lawyers. Lawyers by slow degrees have become conscious of the fact that the changing economic and social scene about them requires, if they are to meet the demands of new fields of practice that are constantly developing, that they prepare themselves for practice in those fields. The Council of the Section at its meeting in Chicago discussed plans for the initiation of a program of substantial scope and content for the education of lawyers.

The chairman of the Section's Committee on Advanced Legal Education, Mr. Carl B. Rix, appeared before the Council and outlined an extensive program of continuing legal education for the Bar. He spoke again on that subject before the Section. In the larger cities the Association may aid the local bar associations in the development and conduct of courses taught by practicing lawyers and law teachers. The Practising Law Institute of New York and the program of the Milwaukee Bar Association were cited as examples. Mr. Rix proposed that a committee be appointed to formulate a program for lawyers in the smaller communities. He suggested that this committee study the possibilities of publishing a series of monographs on administrative law and procedure. These would be distributed by the American Bar Association. The Council of the Section approved the proposal and directed that this committee be appointed.

The problem of granting academic credit to returning soldiers for work taken while in the armed forces was considered. The Council decided that credit toward the law degree could not be given by the schools for such work, but there may be an allowance of credit toward the two-year pre-law college requirement to the extent that intellectual maturity is ascertained by a testing program administered by the armed forces and certified by an approved college.

The interpretations of the Standards of Legal Education were revised during the year by a committee. The report of this committee was approved and the revision will be published at an early date.

The topic for the Section meeting was Post-War Legal Education. Chairman Albert J. Harno reported on the work of the Section during the year. He also stressed the need for planning now for the post-war period. Mr. Arthur T. Vanderbilt urged a modification of the law school curriculum so that more attention would be given to public law, especially to administrative law. Mr. Rix, as mentioned above, presented the proposals of the Committee on Advanced Legal Education.

Section of Municipal Law

IN the absence of Chairman Ambrose Fuller, now serving in North Africa as Captain of AMG, the Municipal Law Section met on August 24, Vice Chairman James L. Beebe presiding.

Following the reading of the chairman's report and the appointment of a nominating committee, Murray Seasongood, Cincinnati, chairman of the special committee on Civil Service, addressed the meeting. He advocated adoption of a resolution attacking the McKellar bill (S. 575) as amended and passed by the Senate June 14, 1943, as an "assault on the federal merit system." He advocated the adoption of other resolutions declaring civil service commissions justified in dismissing appeals for reinstatement of public civil service employees who have gone on strike on the ground that there is no right to strike in the public service, and urging that the civil service merit system be not curtailed or abandoned in war periods. He advocated introduction of greater incentives for making civil service a career.

Former Chairman Barnet Hodes delivered an address on "The Modern City and Blighted Areas," in which he compared modern technological advance to a genie which may either usher in a millenium of peace, well-being and good-will or prove a Frankenstein monster, depending on society's wisdom in controlling it. The chief problem confronting American cities after the war, he said, is the redevelopment of blighted areas. He advocated privately financed projects, supplemented by federal aid housing in the low-rent field, rewriting of zoning and building ordinances to permit use of economical new materials and techniques, and the emergence of building from the handicraft into the modern mass production stage. In-

creased home rule powers are needed to condemn property in blighted areas and carry out redevelopment projects, he declared.

Discussions followed both addresses.

The following officers were elected: Chairman, James L. Beebe, Los Angeles; vice chairman, John L. McCall, Dallas; secretary, Arnold Frye, New York City; assistant secretary, Harold C. Huls, Pasadena, California.

Two new members were elected to the Council for the term expiring in 1947: Marvin E. Boisseau, St. Louis, and W. E. Morse, Jackson, Miss.

Section of Patent, Trade-Mark and Copyright Law

THE first solemn rap of the gavel on the opening session of the Section found the room full, and overflowing into an adjoining room. Considering the difficulty of travel, hotel accommodations, rationing and absence of many members in various branches of the government, the attendance of over 11% of our total membership was surprising.

Great issues were at stake. A sense of duty to see them properly decided pervaded the meeting.

First considered was the Report of the National Patent Planning Commission. Never before had a body of the dignity and character of this Commission applied itself to the sole problem of examining, for the people, the values and faults of its Patent System. The Report found the System sound and wholesome with certain "sanitary measures" required to keep it so. The Section endorsed the Report in principle, reserving the right to examine in detail enactments of the "sanitary measures."

Second in importance was our endorsement of the findings of the Special Committee of the Association on Current Patent Problems (refuting the Shea proposals).

Equal in importance was the adoption of a proposal to study the advisability of the Section's including within its specialized field the Anti-Trust Law, government regulation of trade and such other laws as may be involved in preserving the value of intellectual and industrial property. It is in this field that the Shea proposals lie, and following the proverb we contemplate "taking the devil in the boat with us."

Additional actions of the Section involved discussion of and recommendations on the following topics:

(a) Revision of the Interference Procedure. This is concerned with expediting the procedure of finding who, as between rival claimants for inventorship, is entitled to the patent.

(b) Revision of Procedure in the Court of Claims. Some of the recommendations relate peculiarly to procedure on claims based on patents. Others are general.

(c) Numerous Bills before Congress. Of these, certain revolutionary proposals that the federal government take over all private research facilities and personnel have already aroused widespread opposition from industrial and scientific bodies.

Finally, and of practical importance, the Section approved increase of Section dues from $1.00 to $2.00.

The meeting reflected widespread and thoughtful consideration of the public responsibilities of the Section intensified now by the approaching peacetime conversion of war industry.

Section of Taxation

THE Section of Taxation, at its meeting on August 24, made the following recommendations, all of which were later approved by the House of Delegates:

(1) That there be extended to transferors and transferees in non-taxable reorganizations the full benefit of net operating loss and unused excess profits credit carryovers.

(2) That the law be amended to make it clear that corporations filing consolidated returns are exempt from personal holding company classification.

(3) That the law be amended to make it clear that Post-War Refund Bonds may be transferred to the legal owners of corporate property following corporate reorganizations, mergers, consolidations, liquidations, etc.

(4) That the limitations period for filing claims under Section 722 be made coextensive with the period prescribed for filing claims for refund of excess profits taxes.

(5) That the law be amended to provide that the parent-grantor of a trust for a minor child shall be taxable only on the income actually used during the taxable year for the care and support of the child.

(6) That the law be amended to provide that depreciation in excess of that allowable which did not offset taxable income shall be ignored in computing basis in future years.

(7) That the Association recommend to Congress that consideration of the proposed Internal Revenue Administrative Code be deferred until after the end of the present emergency.

The Section was addressed by Harold M. Groves, of the University of Wisconsin, formerly Chief of Staff of the Treasury Committee on Intergovernmental Fiscal Relations, on the subject of "Coordination of Federal, State and Local Tax Systems", and by Randolph E. Paul, General Counsel of the Treasury, on the subject of "Treasury and Tax Practitioner Relationships."

The Section recommended that action be taken looking toward what it considers the unintentional hardships and injustices of the provisions of the 1942 Act as to powers of appointment. It also recommended that certain changes be made in consolidated return regulations; and that consideration be given to relieving against possible double taxation of the income of trusts, and to permitting transactions on which gain or loss is not recognized to affect the computation of invested capital.

Chairman Vernon stated in his report that the Section and its committees would, at the request of the staff of the Joint Committee, assist in bringing to the staff the suggestions of as many as possible of the members of the Section for clarification and simplification of the federal

tax laws.

The Section held a round table discussion of a modern law for the taxation of property of public utilities prepared by Robert C. Beckett of Chicago. A round table meeting jointly with the Sections of Commercial Law, Municipal Law, Mineral Law and Real Property, Probate and Trust Law was held for the purpose of discussing the report of the United States Treasury Committee on Inter-Governmental Fiscal Relations. This round table was presided over by Hon. Henry F. Long, Commissioner of Corporations and Taxation of Massachusetts.

The Section met at a joint luncheon with the Section of Municipal Law and the Section of Commercial Law.

The following officers were elected: Weston Vernon, Jr., New York, chairman; Percy W. Phillips, Washington, vice chairman; and W. A. Sutherland, Atlanta, secretary. Wright Matthews, of Houston, and Ralph R. Reed, of Los Angeles, were elected members of the Council for the term ending in 1947. H. Cecil Kilpatrick, of Washington, and G. Aaron Youngquist, of Minneapolis, were elected by the Council to fill terms vacated by George E. Cleary and Monte Appel, the terms expiring in 1944 and 1945.

American Law Institute

By HON. HERBERT F. GOODRICH

Adviser on Professional Relations, American Law Institute

FOR twenty years the American Law Institute has been working on its project of restating the common law. During all these years the American Bar Association has not only given patient and courteous hearing to the reports of what we were doing, but it has assisted the Institute in many different ways, not the least of which has been the constant help of the AMERICAN BAR ASSOCIATION JOURNAL in giving us a method of "saying our say" to the profession throughout the country.

We are almost through restating the law. Next year, there will be two full volumes of Property. That concludes the Restatement. Of text there will then be nineteen volumes and they are broken down as follows: Agency 2, Conflict of Laws 1, Contracts 2, Judgments 1, Property 5, Restitution 1, Security 1, Torts 4, Trusts 2. These nineteen volumes obviously do not cover the whole field of the law. They do not purport to. However, even if they do not cover all of the law they cover most of what could profitably be made the subject of restatement. We shall try to make these volumes useful to the practitioner and the judge by two supplementary aids, a general index and a single volume, which we plan to keep up to date, with every citation to the Restatement which has appeared in the reports covered by the National Reporter System.

This, then, is the progress of the Restatement. The best way I know of to see whether it is sufficiently useful is to find its way into the writing of the law when done. Up to July 1, 1943, the citation list totaled 9709, an increase, by the way, of nearly 700 over that of April 1, 1943. As to subjects, they run as follows: Agency 1428, Conflict of Laws 1119, Contracts 2491, Judgments 37, Property 252, Restitution 354, Security 28, Torts 2367, Trusts 1631, Evidence 2. Comment can add little to the significance of these figures.

The Institute has done some other important things in addition to this work of Restatement. Back in the early '30s we wrote a Code of Criminal Procedure. Portions of it have been adopted in several states. The second important piece of statutory work has been the drafting of the Model Youth Correction Authority Act and the Youth Court Act. The third major job which the Institute has done in the statutory field is a Model Code of Evidence. Before adoption by statute or court rule the Code doubtless will receive much discussion. The subject is one of importance to every lawyer who comes into the courtroom. The Institute does not ask him to accept the work of its draftsmen in this branch of the law without the exercise of his own independent judgment. We do ask to have that judgment exercised. The Bar should know what the Code proposes to do and why and know what the considerations behind each proposal are before passing judgment on it one way or the other.

One may not speak with any certainty concerning future work for the American Law Institute. We are engaged on an interesting piece of work with the Conference of Commissioners on Uniform State Laws, looking to a thorough revision of the Uniform Sales Act. We are also engaged in an attempt to draft an International Bill of Rights which was discussed at length at the meeting of the Section on International and Comparative Law. And finally there is a plan for a revision of the Commercial Uniform Statutes and their incorporation into a general Uniform Code of Commercial Law in cooperation with the Commissioners.

Whatever the future may bring, the two decades of the Institute's work have been highly important. A method of group work has evolved which is finding usefulness in many fields of legal endeavor. Legal literature has been enriched and legal scholarship encouraged. The sum total, it is submitted, fully justifies that aim expressed in the Institute's charter creating an organization for "the improvement of the law."

JUNIOR BAR NOTES

By HUBERT D. HENRY
Secretary, Junior Bar Conference

APPOINTMENTS to state chairmanships and committees are being made very rapidly by National Chairman James P. Economos, and all appointments in the Junior Bar Conference should be completed shortly.

Chairman Economos addressed the annual meeting of the Colorado Bar Association in Colorado Springs on September 18 on the subject of improving the administration of justice in traffic courts. On the following Monday, he addressed a traffic court conference in Denver attended by police officials, judges, state officials, members of the legislature and attorneys. Truman Stockton, state chairman for Colorado, presided. As a result of this meeting, plans are now under way for a state-wide traffic conference in the near future.

Similar discussions of the traffic court problem were participated in at meetings of the Kentucky State Bar Association, held in Lexington, Newport and Louisville on September 15, 16 and 17, respectively. Judge S. Merrill Russell, John H. Dougherty, city prosecutor, Captain Estel Hack, manager, Louisville Safety Council, Lieutenant L. E. Chaudoin, traffic engineer, Captain M. L. Mittler, traffic bureau, Major James G. Young, base legal officer and Lt. Jack R. Phipps, legal officer, Provost Marshal's office, took part in a panel discussion at the Louisville meeting.

In Washington, on October 1, representatives of the District of Columbia Bar organizations held a luncheon for the discussion of traffic court problems. Charles S. Rhyne presided. The work of the Traffic Court Committee was described for the benefit of the guests which included Milton W. King, president of the Bar Association of the District of Columbia, Chief Justice George P. Barse, Judge Neilsen and Judge Quinn of the District of Columbia municipal court, Richmond Keech, District of Columbia corporation counsel, Norman Damon, vice president of the Automotive Safety Foundation, and Burton W. Marsh, traffic engineer of American Automobile Association. While in the East, Mr. Economos also conferred with State Chairman Thomas T. Heney of New York City and Grant N. Nickerson of New Haven, Connecticut, and Council Member C. Keating Bowie, Jr., of Baltimore, Maryland.

Vice chairman John E. Buddington addressed the annual meeting of the Vermont Bar Association on October 6 on the improvement of the administration of justice in traffic courts. Mr. Buddington stressed the necessity for reducing traffic accidents and the subsequent loss of manpower in war industries.

Chairman Louis Lisman arranged a luncheon meeting of the Junior Bar men present to hear about the current year's program from Mr. Buddington.

Chairman Economos and former Chairman Joseph D. Calhoun attended a meeting of Traffic Court Judges and Prosecutors held during the National Safety Congress in Chicago on October 5, 6 and 7, as representatives of the Junior Bar Conference. Mr. Calhoun spoke on "The Traffic Court Program of the Junior Bar Conference" and Mr. Economos' topic was "Some Important Recommendations of the George Warren Report." This group passed two important resolutions—one resolution endorsing its participation in a national traffic court conference to be held in conjunction with the meeting of the American Bar Association in 1944, and the other calling on all bar associations, civic groups, radio stations and newspapers to participate in the efforts of the Junior Bar Conference to improve the administration of justice in traffic courts.

Judge Orie L. Phillips, chairman of the Section of Judicial Administration, has appointed a committee of traffic court judges and another committee of justices of the peace to cooperate with the Junior Bar Conference Committee on Traffic Courts. Chairman James J. Robinson of the Criminal Law Section will appoint a committee of traffic court prosecutors to bring his Section into this work.

Charles A. Kothe, of Tulsa, Oklahoma, has been elected to the Executive Council for the Tenth Circuit in place of Gordon B. Christenson, of Salt Lake City, Utah, who was unable to take the position.

The new officers of the Junior Bar Section of the Bar Association of the District of Columbia are: Chairman—Robert M. Gray; vice chairman—William T. Hannan; secretary-treasurer—J. E. Bindeman.

The new officers of the Junior Bar Section of the Alabama State Bar Association are: Chairman—Robert W. Gwin, Birmingham; vice chairman—Alto V. Lee, III, Dothan; secretary—Lawrence F. Gerald, Clanton.

The members of the new Executive Committee of the Younger Members Section of the Illinois State Bar Association are: Chairman—Adolph A. Rubinson, Chicago; vice chairmen—Donald V. Dobbins, Champaign, Roger W. Barrett, Chicago, Lawrence R. Hatch, Urbana, and Mark O. Roberts, Springfield.

The new chairman of the Younger Members Committee of the Chicago Bar Association is Samuel W. Witwer, Jr.

The new officers of the Junior Bar Section of the Mississippi State Bar Association are: Chairman—Richard E. Stratton, III, Jackson; vice chairman—Paul Farr, Prentiss.

WAR NOTES

By TAPPAN GREGORY
of the Chicago Bar

IN the Legal Assistance Memorandum No. 7, under date of September 25, 1943, Lt. Col. Milton J. Blake, Chief, Legal Assistance Branch of the Judge Advocate General's Department of the Army, calls attention again to the War Department pamphlet of December 31, 1942, containing in Section I the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 and amendments of 1942, and, in Sections II to VI inclusive, much valuable explanatory information concerning the Act and the amendments.

The War Department has recently published Circular No. 217, September 18, 1943, containing a very intelligent discussion of the laws of all the states where some provision has been made for recognizing the authority of Army officers to administer oaths and affirmations to and take acknowledgments of military and naval personnel and in many instances civilians serving with the armed forces.

The War Aid Committee of the Cleveland Bar Association, under the chairmanship of Karl K. Kitchen, is continuing the work carried on last year on behalf of soldiers, sailors, marines, coastguardsmen and others in the military service of the government, and their dependents. Arrangements have been made by this committee to avail itself of the services of the bailiffs of the municipal court of Cleveland, offered by Frank T. Kelley of that court, a member of the committee. One of the serious problems being coped with is the practice of certain creditors of filing claims against the wives of men in the armed forces without mentioning the fact that the husband is absent in the service. The result, of course, of this procedure is to avoid the effects of the Soldiers' and Sailors' Civil Relief Act.

The following extracts are taken from a letter received by Joseph W. Henderson, President of the American Bar Association, from a British sailor. They demonstrate real appreciation of a brilliant piece of work:

> I am writing to tell you of my lifelong thankfulness to you for the great kindness and generosity you have shown me. I realize that you have given many hours of your valuable time and all the benefit of your expert knowledge in order to get the case through before my ship leaves port.
>
> I shall always have a great respect for the lawyers of this country and the way they sort things out.
>
> I shall leave this port determined to do my best for the United Nations, and with feelings of admiration for the way this country is run.
>
> I hope you will be so good as to accept a picture of our ship in rough weather, with her fo'c's'le coming out of the water covered with sea. It is a very small token of the gratitude I feel.

The American Bar Association Committee on War Work has sent a questionnaire to the chairmen of all of the state War Work Committees and twenty-four of the larger local bar association War Work Committees in an effort to coordinate information as to the exact nature of services rendered. This information was specially requested by Lt. Col. Blake for the guidance of Legal Assistance Officers. The following is a copy of the questionnaire with its covering letter:

"It appears now that most of the legal questions troubling men in the armed forces relate to matters of domestic relations, particularly divorces. In the past there has been no uniformity in the determination of state bar association Committees on War Work as to whether or not they will undertake to represent soldiers and sailors in divorce matters, or whether or not such cases will be handled gratuitously if representation is undertaken. Each Committee must decide these questions for itself.

"In view of the increasing number of divorce cases, the Committee on War Activities of the Chicago Bar Association recently reexamined the subject of military legal service and adopted a resolution, copy of which is enclosed. I should appreciate it greatly if in your state similar reconsideration could be given.

"Whether or not you find that you can reach a conclusion similar to that arrived at by the Chicago Bar Association committee, it would be very helpful if you would answer briefly the four enclosed questions as to your present committee policy. Legal Assistance Officers in the Army and Navy are handicapped by not having exact information on these matters.

"The answers to the questions will provide the basic facts required by Legal Assistance Officers for aiding servicemen. When the material is in hand, I will give it to the War and Navy Departments for distribution to the Legal Assistance Officers. I intend also to distribute it to each of you, and we can then see whether there are any serious differences. Of course, if it is at all possible to secure more uniformity in the practices in the different states, it would be helpful.

"The usefulness of this compilation will be diminished if any state is omitted. I therefore venture to hope that each of you will send me the answers with the least possible delay."

I. Will your committee arrange for representation by counsel to defend a divorce suit against a serviceman:

A. To the extent of applying for a stay of proceedings under the Soldiers' and Sailors' Civil Relief Act? If the answer is "Yes", please indicate whether this will be done:

1. On a gratuitous basis (except for costs) in all cases.
2. Upon gratuitous or fee basis depending upon the circumstances in each case.
3. Upon a fee basis depending upon the circumstances in each case.
4. Upon a fixed schedule of fees. (Please attach any such schedule)

B. On the merits?
If the answer is "Yes", please indicate whether this will be done:

1. On a gratuitous basis (except for costs) in all cases.
2. Upon a gratuitous or fee basis depending upon the circumstances in each case.
3. Upon a fee basis depending upon the circumstances in each case.
4. Upon a fixed schedule of fees. (Please attach any such schedule)

II. Will your committee arrange for representation by counsel to procure a decree of divorce, annulment, or separation for a serviceman?
If the answer is "Yes", please indicate whether this will be done:

1. On a gratuitous basis (except for costs) in all cases.
2. Upon a gratuitous or fee basis depending upon the circumstances in each case.
3. Upon a fee basis depending upon the circumstances in each case.
4. Upon a fixed schedule of fees. (Please attach any such schedule)

III. In addition to the services indicated by the answers to the preceding questions, what additional assistance will be provided by your committee for servicemen in connection with litigation relating to divorce, annulment and separation?

IV. Further comment: (Please attach here a copy of any resolution adopted by your committee dealing with this subject, or make any explanatory comment of interest)

Reginald I. Kenney quotes as follows from a letter from the Sixth Service Command:

> So far as the situation in Milwaukee is concerned, we are informed that lawyers there have given splendid cooperation as they have been called upon by various officers at the Second Service Headquarters. Our information also is that the Bar of Wisconsin, whenever called upon to do so, has rendered willing and efficient service to military personnel. The Bar is to be congratulated upon its attitude, which is much appreciated here.

At the annual dinner of the State Bar Association of Wisconsin, an award was made to Mr. Kenney for outstanding service as chairman of the War Legal Service Committee.

Walter B. King, Secretary of the Ketchikan Bar Association writes that that association has agreed to render legal service in Alaska to men in the armed forces and their dependents. He says "We have not formed a committee such as is referred to in your letter because every member of the association has agreed to do his share when called upon."

"A Country in the Grip of the Law"

THE noted columnist, Mr. John Kieran, of the New York *Sun*, known to radio audiences through "Information Please", wrote recently of the place of the law and the lawyers in American history and government. This layman's tribute to the dominant characteristic of representative government in the United States was entitled "A Country in the Grip of the Law."

"This country is in the grip of the law," wrote Mr. Kieran, "and has been ever since the Founding Fathers laid the cornerstone, otherwise known as the Constitution of the United States. By and large, we have done better than all right as a nation since 1789 and nothing in this article is to be taken as carping criticism of the legal profession in this country. Possibly it is all for the best that licensed barristers have had almost complete charge of our public affairs since colonial days. But it's curious, too, in some ways.

"This country was built by explorers, woodsmen, trappers, traders, hunters, carpenters, miners, blacksmiths, sailors, inventors, merchants, manufacturers, farmers, engineers, architects, contractors, plasterers, bricklayers and bankers. But the lawyers took charge and still have the country in hand. Look it over. Our aldermen and councilmen are lawyers in the majority. Most of our mayors are lawyers. Most of our state governors are lawyers. Most of our Representatives and Senators in Congress assembled are lawyers. Twenty-three of our thirty-one Presidents of the United States have been lawyers.

"One result of all this has been that we have grown to be one of the great Powers of the world. Another result has been that we probably have more laws per square mile of territory than any other country in the world.

"Not Admitted to the Bar

"There were eight Presidents of the United States who were not admitted to the Bar. George Washington was first. But the law, in the person of John Adams, took over when Washington stepped out. Jefferson, Madison, Monroe, John Quincy Adams, Andrew Jackson and Martin Van Buren, who moved into the White House in that order, were lawyers. It must be admitted that there were extenuating circumstances in the case of Andrew Jackson. "Old Hickory" was famous as a soldier, too. But there is no denying that he studied law in North Carolina and practiced it in Tennessee.

"The second non-lawyer who became president of the United States was William Henry Harrison. He was a soldier and it was his military fame that carried him into office. In early life William Henry Harrison had a narrow escape from becoming a doctor. That, of course, would have barred him from the White House. Though the lawyers have never written a law to that effect, it's a matter of record that no physician ever has been elected President.

"The twelfth President of the United States was Zachary Taylor, a soldier. He also planted a bit of cotton, but the voters gave that little thought. They elected him because of the distinction he had gained on the field of battle. At that point in our history the presidential score was: Lawyers, 9; Soldiers, 3; All Other Trades and Professions, 0. Yet there was no feeling among the butchers, the bakers and candlestick makers that they should rise in revolt against such limited leadership.

"Coming in the Back Way

"The seventeenth President and the fourth non-lawyer was Andrew Johnson, who was a tailor. But the tailoring trade couldn't point to him as one of their own who was elected President of the United States. He was not elected to that office. He was shot into it, in a manner of speaking. He was Vice President when Lincoln was assassinated and thus he moved up to become President for a turbulent time.

"Strange as it may seem, he was succeeded by another non-lawyer. That was Ulysses Simpson Grant, a soldier pure and simple. The next or sixth non-lawyer to appear as President was Theodore Roosevelt, soldier, author and naturalist. The seventh was Warren Gamaliel Harding, a newspaper publisher. The eighth was Herbert Hoover, an engineer.

"So we have had twenty-three lawyers, five soldiers, one tailor, one publisher and an engineer in the White House. It's probable that any one who delves into the archives of Maine, Michigan and Mississippi or thumbs through the city hall history in any large city will find that the lawyers have maintained the same overwhelming lead as governors and mayors ever since the polls were opened. And to think that all this time the soap box orators have been bellowing that the bankers ruled this country!"

Letters to the Editors

To the Editors:

I am bringing to you a unique and urgent problem, namely, how to place books in the hands of prisoners of war, especially Americans, but occasionally also other Allied prisoners held by the Axis countries. Typical of the requests is one from a British officer for a group of law students who need any of the following books: Salmond on Torts, Laskey on Divorce, Hart on Local Government and Cheshire on Real Property. Other requests are for books on Mercantile Law and on Common Law. These come to me from Geneva through one of my associates, a representative of a non-belligerent nation, who is allowed to visit the prison camps. It occurs to me that you may be in a position to donate books for this purpose.

In a recent cablegram from our headquarters in Geneva, no less than four men were mentioned whose law studies were interrupted by the war, who ask for material to continue their studies under their present monotonous conditions. Warren A. Seavey, Francis B. Sayre, Albert J. Harno, and others, are helping me secure a carefully edited minimum list of textbooks to place in the hands of these men. We have limited funds for this purpose. However, the increasing number of requests which we are receiving from such men is far beyond our financial resources. I may say that the door is now opening to send materials to the prisoners of the Allied Nations in the Far East and we could use hundreds of books in the general field of law.

During July and August we sent, in addition to many volumes for general camp libraries, a book or packages of books to no less than 1088 prisoners of war. In every case this was in answer to their requests. We have indisputable evidence that practically all shipments are actually reaching these men. It is highly desirable that a period which for these men might easily become monotonous and marked by frustration should be utilized in constructive preparation for the coming days.

Any questions or correspondence concerning this matter should be addressed to me as below; packages of books should be sent in my care to our warehouse:

War Prisoners' Aid of the Y.M.C.A.
55 Fifth Avenue, 14th Floor
New York, New York

DAVID R. PORTER
Director of Education
Room 260, Library of Congress Annex
Washington, D. C.

To the Editors:

I HAVE read with great interest the article "Bullets or Boycotts," September 1943, AMERICAN BAR ASSOCIATION JOURNAL, page 491, incorporating the late Dean Wigmore's notes on a proposed solution for the attainment of world peace. However, I am puzzled as to its application.

It seems to me that his plan presupposes that the causes of wars have been injury, whether to person, organization or nation, to property, whether real or personal, tangible or intangible. It seems to overlook the fact that other causes of war exist, and they are national prestige, na-

tional greed, and belief in racial supremacy.

How can his proposal be applied to prevent war between two countries where the only question is whether or not Nation A shall not seize territory now in the possession of Nation B, and which once, perhaps fifty or a hundred years ago, was part of Nation A? Nation A bases her claim on the fact that, once, when she was a great empire, this territory belonged to her. Her present growing racial pride dictates the desire to regain the greatness of her former self, when an empire. What is Nation B to do? How can she be insured against such a claim made against her? She hurt Nation A in no manner, excepting her present existence with territory now coveted by Nation A.

Further, the article assumes that nations will meet together as equals. How can this be brought about by insurance, when there are superior and inferior nations; nations large and small, and those that are classed as "have nots," those that are classed as "haves"? Or is predicated on the belief that the status quo established after this war will remain forever, without the slightest desire on the part of any nation to disturb it?

Wars have been caused by religion, by the desire of nations, which felt themselves to be great, to become greater still; by the desire of those which were insignificant, to become strong. And one of the measures of such national greatness was the amount of land possessed. These disturbances will have to be excised before insurance can be used as a means of preventing wars that are based, and based solely, on economic damage and the attempt at restitution.

Dean Wigmore's suggestion is good, but only insofar as it attacks the secondary cause of war. The major question is how to obviate the primary cause.

I would like to hear the comments of other readers.

FRANCES KEEN

Long Island City, N. Y.

To the Editors:

IN 1924 the American Bar Association took a trip to England to meet the brethren of the Bars of England and Scotland. I, the senior honorary member of the Association, was invited to accompany them.

It was then that I, for the first time, saw the traditionary "Judge's Bouquet." Taking a young friend with me, I visited "Old Bailey" when a criminal court was in session. The presiding judge, whom I had the honour and pleasure to be somewhat familiar with, had me and my young friend placed so that we could see all that was going on.

One of the first things which attracted our notice was a very large bouquet of flowers standing on his desk at the judge's left hand. I had read of the bouquet, and the judge told it all over to us at the dinner, so-called, but more like our luncheon.

In the olden times, the jails of England were frequently disgracefully kept, and there often broke out in them the contagious disease commonly known as jail fever. It seems to have been identical with the immigrant fever which frequently afflicted emigrants on their journey across the Atlantic. My father, coming from Scotland in 1833, found very many afflicted with it in Quebec, and our city, still York, had several visitations recorded by contemporaries. My medical friends conjecture that it was a form of typhus.

It was very infectious, and in more than one instance — counsel in one case—it is said a judge received the infection from the prisoner when brought to the Bar for trial, in at least one instance with fatal results.

By the crude and undeveloped medicine of those times, it was thought that the infection could be warded off by the interposition of flowers, and accordingly a bouquet of flowers was placed on the judge's desk to save him from the danger of infection, actual not imaginary.

According to English custom, the practice was and is kept up, though the danger no longer exists.

WILLIAM RENWICK RIDDELL

Toronto, Ontario

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACTS OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933

Of American Bar Association Journal, published monthly at Chicago, Illinois, for October 1, 1943.

State of Illinois } ss.
County of Cook }

Before me, a Notary Public in and for the State and county aforesaid, personally appeared Edgar B. Tolman, who, having been duly sworn according to law, deposes and says that he is the Editor-in-Chief of the American Bar Association Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation) , etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher, American Bar Association, 1140 N. Dearborn St., Chicago 10, Ill.; Editor-in-Chief, Edgar B. Tolman, 30 N. LaSalle St., Chicago 2, Ill.; Managing Editor, there is none; Business Managers, there are none.

2. That the owner is: American Bar Association, Joseph W. Henderson, President, Packard Building, Philadelphia 2, Pa.; Harry S. Knight, Secretary, Sunbury Trust & Safe Dep. Bldg., Sunbury, Pa.; John H. Voorhees, Treasurer, Bailey-Glidden Bldg., Sioux Falls, S. D.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: There are none.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

Edgar B. Tolman,

Editor-in-Chief

Sworn to and subscribed before me this 5th day of October, 1943.

(SEAL) Helen P. Lovelace.

(My commission expires Nov. 25, 1943.)

LONDON LETTER

SINCE the war started no new appointments of King's Counsel have been made, as it has been considered by the Lord Chancellor that it was undesirable in war time to recommend such a course to His Majesty. In a statement issued from the Lord Chancellor's Office it is explained that many members of the Junior Bar, who might otherwise wish to make application, have suspended practice because they have undertaken military or other national service, and some King's Counsel are also absent for similar reasons. It is important that, so far as possible, the professional prospects of those who have undertaken duties of this kind should not be unnecessarily prejudiced.

The war, however, having gone on for three and a half years, and the ranks of practising King's Counsel having been so thinned by death and other causes as to create practical inconvenience, the Lord Chancellor is satisfied that the public interest requires that more King's Counsel should be available to assist in the administration of justice. He has, therefore, informed the profession that he proposes to make up a list of recommendation for silk after a sufficient interval to enable those so minded to apply.

It is stated that, in considering applications and in deciding whom to recommend, the Lord Chancellor will bear predominantly in mind the public need which exists in particular areas and in different branches of the law for additional leaders, and also the necessity of retaining among the members of the Junior Bar a sufficient number of experienced barristers to discharge the duties incumbent upon Juniors. This last consideration will make the choice a difficult one as the ranks of the Juniors have been greatly depleted by the war, and calls to the Bar have by no means kept pace with the demand.

There is always a certain amount of risk in "taking silk." The writer has known many instances of successful Juniors who have, for no apparent reason, failed utterly as King's Counsel. It was the late Mr. Justice Bray who expressed the view that no Junior was likely to succeed as a Silk unless he had been making at least £4,000 a year for three years.

The complete outfit for a King's Counsel consists of black knee-breeches, black silk stockings and shoes with buckles, a black Court coat and waistcoat, lace fall and lace at the edge of the sleeves, a full-bottomed wig and a bob wig, a silk gown and an everyday working gown. It is only on ceremonial or State occasions that the knee-breeches, lace, and silk stockings are worn. On ordinary occasions the Silk wears working gown, black Court coat and waistcoat and bob wig, except that when appearing before the House of Lords he is attired in the silk gown and full-bottomed wig. The present cost of this outfit, including war purchase tax, is from £110 to £120—approximately twice as much as the pre-war price.

After the new Silks have been notified that His Majesty has been pleased to appoint them His Counsel, they assemble at the House of Lords, attired in full dress, each to make the following declaration:—"I do declare that well and truly I will serve the King as one of His Counsel learned in the law and truly counsel the King in His matters, when I shall be called, and duly and truly minister the King's matters, and sue the King's process after the course of the law, and after my cunning. For any matter against the King where the King is party save in so far as I may be therein allowed or licensed I will take no wages or fee of any man. I will duly in convenient time speed such matters as any person shall have to do in the law against the King as I may lawfully do, without long delay, tracting or tarrying the Party of his lawful process in that that to me belongeth. I will be attendant to the King's matters when I be called thereto."

Welsh Courts

Under the powers conferred upon the Lord Chancellor by the Welsh Courts Act, 1942 (referred to in the March number of the JOURNAL) he has made rules embodying the prescribed translation in the Welsh language of twenty-two oaths and affirmations in general use in the courts. The rules also provide for the employment and remuneration of competent interpreters and fixes the rate of such remuneration in Assize Courts and Quarter Sessions at £2:2:0 for a period of four hours or more a day, and £1:1:0 for less than four hours. In all other courts it is half this rate. In accordance with the terms of the Act the Rules also provide that any remuneration payable to an interpreter shall be paid out of the same fund as the expenses of the court are payable, and that no party to the proceedings, nor any witnesses, shall be required to pay any part of such remuneration.

Lord Hewart

Lord Hewart, formerly Lord Chief Justice of England, died on May 5th, 1943. He may be said to have had an impressive career. His early years were spent as a journalist and it was not until he reached the age of thirty-two that he was called to the Bar at the Inner Temple. Born on 7th January, 1870, he was educated at Manchester Grammar School and University College, Oxford. As a junior he practiced chiefly in Manchester and Liverpool, having joined the Northern Circuit. He took Silk in 1912, became a Bencher of his Inn in 1917, and Treasurer in 1938. Twenty years after his Call to the Bar he was appointed Lord Chief Justice, a position he held till 1940. He was successively Solicitor-General, 1916-1919, and Attorney-General, 1919-1922, and was given a seat in the Cabinet in 1921. The honorary degree of LL.D. was conferred upon him by Manchester, Toronto,

Sheffield, Birmingham and Johannesburg Universities, and the honorary D.C.L. by Oxford University. He was also an honorary member of the Canadian and American Bar Associations. He attended the Peace Conference in Paris after the last war, and was President of the Commission on War Criminals. Lord Hewart was a well-known figure in Masonic circles, being a member of many lodges, and P.G.W. of England. As an after-dinner speaker he was in great demand at such functions.

Invasion

Now that the war situation has improved so much to the advantage of the Allied Nations, and the British Prime Minister has spoken to Congress in praise of the Home Guard, formed when there was a possibility of invasion of this country by the enemy, it is interesting to recall an earlier occasion upon which an attempt at invasion of our shores was expected, and the part then played by members and inhabitants of the Inns of Court. In February 1798 Napoleon inspected the preparations for the invasion of England, and King George III thought it proper to acquaint the House of Commons "that His Majesty has received various advices of preparations made, and measures taken in France, apparently in pursuance of the design openly and repeatedly professed." He also asserted his conviction that by the zeal, courage and exertion of his subjects, such an enterprise, if attempted, would terminate in the confusion and ruin of those engaged in it.

On the 13th February the Benchers of the Middle Temple resolved that the sum of £1,000 be subscribed by the Society to the voluntary subscription opened at the Bank towards the exigencies of the country. It appears from the Minutes of Parliament of that Inn, dated 7th April, 1798, that the members and inhabitants of the two Temples had enrolled themselves by the name of the "Temple Association," under the authority of a letter received by them from His Majesty's Principal Secretary of State for the Home Department, "to serve at their own expense in case of an invasion of this country by the enemy," and it was ordered that the Association should be permitted to exercise in the Middle Temple Garden at all time. On the 18th May, 1798, similar use of the Garden was given for the volunteers of St. Clements. On the 20th June, 1799, colours were presented to the Temple Association in the Inner Temple Garden, on which occasion the bills for "collation, confectionery, provisions, etc., amounted to £73:3:1, and a further charge of £6:6:0 was made for the use of a pavilion erected in the Garden.

On February 9th, 1798, Lincoln's Inn, which had also formed an Association, supplied the sum of £1,000 as a voluntary contribution from its funds towards the exigencies of the country, and on February 26th in the same year Gray's Inn provided the sum of £500. Two days later permission was given by the latter Society to the Armed Association of the United Parishes of St. Andrew, Holborn above Bars and St. George the Martyr for members of the Association to be drilled and exercised in Gray's Inn Gardens. This Regiment was known as the Bloomsbury and Inns of Court Association. All of these regiments were disbanded on the Peace of Amiens in 1802, but were re-organised in 1803 as three regiments — The Bloomsbury and Inns of Court Association; The Law Association (formed from the Lincoln's Inn and Temple Associations) and the Gray's Inn Rifle Corps. The Law Association received the name of "The Devil's Own" from King George III on an occasion of a review in Hyde Park in 1803. Since then its name has been changed from time to time. In 1859 it became the 23rd Middlesex (Inns of Court) Royal Volunteer Corps, and subsequently the 14th Middlesex (Inns of Court) Royal Volunteer Corps. In 1908 it was known as the 27th Battalion London Regiment, and shortly after, by an order of King Edward VII, the Inns of Court Officers Training Corps. During the years 1914-1918 the Corps passed over 14,500 through its ranks, of whom 11,000 were commissioned to all branches of the Service. In 1932 the name of the Corps was again changed, and it became "The Inns of Court Regiment."

The earliest military "Associations" of the Legal World were formed in 1584 to "serve and protect Her Majesty Queen Elizabeth against all who may harm her person as well by force of arms as by all other means of revenge."

S.

Middle Temple

JOHN A. RAWLINS

(Continued from page 651)

cident must suffice. The last act of his holdover predecessor was to transfer to General Sherman, Senior General of the Army, a large part of the administration of the military establishment customarily assigned to the Secretary of War. This was done with Grant's approval. Rawlins regarded the order as revolutionary and an illegal encroachment on his official authority. To restore the previous order of things, however, was a matter of the greatest delicacy in view of the close bonds between Grant and Sherman, and the cordial relations between Sherman and Rawlins. Nevertheless, Rawlins succeeded in persuading Grant to revoke the order.

On September 6 the brave and faithful heart, which had carried Rawlins through so many vicissitudes in the swift and dramatic years since that memorable night at Galena in 1861, gave out. His death was an irreparable misfortune for his old chief, who had said of him, "He comes the nearest being indispensable to me of any officer in the service." It was also a great loss to the country for, as Dana summed it up, "Public servants of his quality will always be few, and there are plenty of men whose names will flourish largely in history without having rendered a tithe of his unostentatious and invaluable contribution to the great work of the nation."

BAR ASSOCIATION NEWS

The State Bar of California

RUSSELL F. O'HARA of Vallejo was elected president of the State Bar of California by the Board of Governors in session in San Francisco September 17. He succeeds Frank B. Belcher of Los Angeles.

Other officers elected are: Bradford M. Melvin of San Francisco, Arnold Praeger of Los Angeles, M. B. Wellington of Santa Ana, vice presidents; Robert M. Sheridan of Ventura, treasurer; Jerold E. Weil of San Francisco, secretary.

The Executive Committee of the Conference of State Bar Delegates announced its officers as follows: Warren E. Libby of Los Angeles, chairman; Edwin A. Heafey, of Oakland, first vice chairman; Delger Trowbridge of San Francisco, second vice chairman. N. F. Bradley of Visalia was named to the Executive Committee to replace Frederick W. Docker of Fresno, who assumed his new duties as a member of the Board of Governors of the State Bar. Other members of the Executive Committee are Harry W. Horton, El Centro, Raymond G. Thompson, Pasadena, and R. M. Barrett, Santa Rosa.

Colorado Bar Association

HIGHLIGHTED by the addresses of Associate Justice Wiley B. Rutledge of the United States Supreme Court, and W. F. Lilliston of Wichita, the forty-sixth annual meeting of the Colorado Bar Association held in Colorado Springs was attended by over one-third of the practicing lawyers in the state. Chief items of interest on a vital two-day program were the symposium on war legislation and its effect on property rights, the legal clinic held for army legal assistance officers and lawyers, and a skit presenting some of the outstanding features of the proposed Model Code of Evidence.

The two-day bar meeting was preceded by a conference of district court judges, presided over by Judge John L. East of Trinidad. Chief subject of discussion by the judges was the preliminary draft of the Federal Rules of Criminal Procedure.

Officers selected for the forthcoming year were John L. Clark of Glenwood Springs, president; Ben E. Sweet of Denver, president-elect; Charles Rosenbaum of Denver, senior vice president; Earl Bryant of Montrose, W. W. Gaunt of Brighton, and Chester B. Horn of Colorado Springs, vice presidents; Vernon V. Ketring of Denver, treasurer, and Wm. Hedges Robinson, Jr., secretary.

Declaring that the greatest danger from the present war would be the failure of this nation to participate in a world plan to enforce world peace, Justice Rutledge said that the "only security for the future is in the expansion of the basic principles of the legal profession—security in law and in the legal organization of human institutions so that there may be law not only among men and among states, but law also among nations. We cannot have law at home when we have anarchy abroad. We can have only the semblance of freedom here when international conflicts disturb not only our peacetime activities but threaten to disturb our whole social structure every score of years."

In a delightful satirical address, Mr. Lilliston dissected Mussolini and Hitler, and left their mangled remains quivering from his barbs. He pointed out, however, that there are democracies and dictators on both sides of the conflict and stated that we are fighting for "the personal liberty of self-commanding men, the castle that is our home, the shrine that is our fireside and the privacy of private property and private enterprise. We are fighting for that fifth freedom—the freedom of every man to be unequal according to his merits."

After summarizing the tasks of the Colorado Bar Association during the past year and particularly with reference to war work, Edward L. Wood of Denver, retiring president, called upon the lawyers not to relax their efforts to strengthen the association. "The stronger we become as a bar organization, the sounder will be our individual position at the war's end. This means a better place in life for those who return from the war. This much we owe to our members in the service."

Lt. Col. Milton J. Blake, Chief Legal Assistance Officer, J. A. G. D., spoke to the association concerning the legal assistance plan in action. Following his talk, legal assistance officers in the area held a conference in conjunction with members of the lawyers' war emergency committee. Attending this meeting, among others, were Col. Frank E. Shaw and Col. Neal D. Franklin, Staff Judge Advocate 4th District, A. A. T. T. C.

Among the outstanding committee reports presented to the association was that of the Lawyers' Emergency Committee, headed by Ben E. Sweet of Denver, which reported that it arranged a conference of all legal assistance officers of the Seventh Service Command and the Fourth District Air Force Technical Training Command to implement the legal assistance program, and that it had devised an induction notice and property guide for inductees and enlistees now used in this area, besides

aiding the navy in its varied programs. Other committees reporting on the war work included that of the Legal Aid Committee under chairmanship of S. Park Kinney of Denver which stated that legal aid bureaus for civilians and service men were functioning in Denver and Pueblo.

A traffic court survey conducted by that committee under the direction of Truman A. Stockton of Denver revealed that outside of Denver there is an urgent need for a new method of disposal of traffic cases and the need to eliminate the fee system in the justice court system. Following the report of this committee, James P. Economos, of Chicago, chairman of the Junior Bar Conference, commented on the need for a thorough overhauling of the traffic court problem all over the United States.

Discussion of minimum fee schedules by Carl Cline of Denver aroused considerable interest and while there was a general agreement on the premise of the committee that "unless lawyers receive a reasonable compensation for services, leadership furnished by the Bar is bound to decay," there was no unified agreement on the method of securing adequate compensation to justify studious and painstaking effort in the disposition of legal matters.

The temporary committee on revision of criminal law and procedure, under the leadership of Judge Joseph E. Cook of Denver, urged that a modern criminal code be devised by the lawyers and adopted by the legislature as an effective weapon against crime.

Other committee reports suggested the establishment of a judicial council, the further study of the Model Code of Evidence, and the plan for uniformity in real estate title practice in the state and an agreement with realtors as to the limits of their authority.

Section meetings of the association revealed that the water section and the real estate, probate and trust law section had drafted and were drafting model statutes in their fields. The district attorneys association devoted most of its time to a discussion of problems engendered by the war. A section on taxation was also organized at this meeting.

Vermont Bar Association

THE sixty-sixth annual meeting of the Vermont Bar Association was held in Montpelier October 5 and 6. An exceptionally interesting program was carried out.

The president, Deane C. Davis, gave an address on "The Judicial Function in Administrative Law" in which he reviewed recent tendencies in this subject and stressed the importance of perfecting administrative procedure by the enactment of S. 675 or S. 674 or other legislation providing adequate judicial review.

Dean Roscoe Pound's address on "Improving the Administration of Justice" was devoted in part to conditions in Vermont and made several specific suggestions for reform.

John E. Buddington of Boston spoke on "Traffic Courts."

Law forums were conducted by A. Pearley Feen on "Motions for Re-argument" and by Joseph G. Frattini on "Pre-trial Procedure."

The annual dinner was attended by over 160 members and guests. Governor William H. Wills extended greetings and urged more attention to the matter of state rights. The President of the American Bar Association, Joseph W. Henderson, gave one of the most interesting addresses ever heard by this association. He spoke of the war work being done by lawyers and other activities of the American Bar Association, especially stressing the need of opposing administrative absolutism.

Memorial addresses were delivered by Fred A. Howland for Senator Frank C. Partridge and by James B. Campbell for David S. Conant.

The present membership of the association is 330, of whom 50 are in the United States military service.

The following officers were elected: President, Frank E. Barber, Brattleboro; vice presidents, Major General Leonard F. Wing, Rutland, Col. Paul A. Chase, Ludlow, and Lee E. Emerson, Barton; treasurer, Webster E. Miller, Montpelier; member of Board of Managers, James B. Campbell, St. Johnsbury; secretary, Harrison J. Conant, Montpelier.

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RATES

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